SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 417

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

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712547—46——1

1 In County Court of Roberts County, South Dakota

Proof of Claim of United States Department of Agriculture

Filed March 2, 1942

U. S. DEPARTMENT OF AGRICULTURE
FARM CREDIT ADMINISTRATION
EMERGENCY CROP AND FEED LOAN OFFICE
OMAHA, NEBRASKA

MEMORANDUM

To All Receivers, Referees, Executors, Administrators, Assignees, and Courts Dealing With Insolvent, Bankrupt, or Deceased Borrowers of the Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska:

The United States Government, acting through the Secretary of Agriculture or through the Governor of the Farm Credit Administration, has made emergency crop and feed loans to farmers. Loans of this character are now administered by the Farm Credit Administration, of which this office is a part.

Attention is directed to the provisions of Sections 191 and 192 of Title 31, Chapter 6, of the United States Code, entitled "Debts by, or to, the United States." These Sections, also designated Sections 3466 and 3467 of the Revised Statutes, are as follows:

PRIORITY ESTABLISHED

31 U. S. C. 191 (R. S. # 3466):

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

LIABILITY OF FIDUCIARIES

31 U. S. C. 192 (R. S. # 3467):

"Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts, before he satisfies and pays the

debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

Therefore, in conformity with Section 191 quoted above, claims filed by this office should be paid prior to the payment of other claims.

Approved and allowed September 1, 1942, for the sum of $412.94 and $110.86.

GEORGE G. REMUND,
Adm.

2

U. S. DEPARTMENT OF AGRICULTURE
FARM CREDIT ADMINISTRATION
EMERGENCY CROP AND FEED LOAN OFFICE
OMAHA, NEBRASKA

FEBRUARY 28, 1942.

34D 325176—William Buttke, 34W 77527—Corona, South Dakota, Roberts County.

CLERK OF COUNTY COURT,
Roberts County, Sisseten, South Dakota.

There is listed below a statement of the above-captioned borrower's indebtedness to this office:

Year and kind of loan	Loan No.	Principal sum	Interest to 6-15-42	Total	Daily interest after 6-15-42
1934 drouth	325176	$290.00	$119.60	$409.60	$0.0435
1935 crop	77527	80.00	29.90	109.90	.0120

Make your remittance payable to Governor, Farm Credit Administration, and forward direct to this office. If you prefer, you may tender your remittance to our local field supervisor.

This is in reply to—

Very truly yours,

John T. Ashford,
JOHN T. ASHFORD,
Regional Manager.

cc. George G. Remund, admr.

[File endorsement omitted]

Exhibit "A"

ESTATE OF WILHELM BUTTKE, DECEASED

To the GOVERNOR, Farm Credit Administration for and on behalf of the United States of America, Dr.:

34D 325176

Money loaned to said decedent by the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved June 19, 1934, principal sum as follows, to wit:

July 28, 1934—34D 325176	$40.00
Sept. 14, 1934—Supp. 325176	40.00
Nov. 14, 1934—Supp. 325176	30.00
Dec. 18, 1934—Supp. 325176	50.00
Feb. 13, 1935—Supp. 325176	50.00
Mar. 19, 1935—Supp. 325176	80.00
	290.00

as is evidenced by his promissory notes dated July 20, 1934, September 10, 1934, November 5, 1934, December 12, 1934, January 31, 1935, March 11, 1935; that no part thereof has been paid and there remains due the entire amount so loaned—$290.00—with interest at the rate of five and one-half per centum (5½%) per annum, accounting from the date of each loan advance until paid; true and correct copies of which said notes are attached hereto and made a part hereof.

34W 77527 8-20-40

Money loaned to said decedent by the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved February 23, 1934, principal sum—$80.00—as is evidenced by his promissory note dated August 13, 1934; that no part thereof has been paid and there remains due the entire amount so loaned—$80.00—with interest at the date of five and one-half per centum (5½%) per annum, accounting from August 31, 1935; a true and correct copy of which said note is attached hereto and made part thereof.

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5 In County Court of Roberts County

This claim of the United States of America entitled to priority of payment under Title 31 Section 191 of the United States Code (Revised Statute 3466).

IN THE MATTER OF THE ESTATE OF WILLIAM BUTTKE, DECEASED, ALSO KNOWN AS WILHELM BUTTKE, JR., OR WILHELM BUTTKE

STATE OF NEBRASKA,
County of Douglas, ss:

John T. Ashford, Manager, Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska, an authorized agent of the Governor, Farm Credit Administration, for and on behalf of the United States of America, being sworn, deposes and says that the amount of the attached claim against the estate of William Buttke, also known as Wilhelm Buttke, Jr., or Wilhelm Buttke, deceased, late of the vicinity of Corona, County of Roberts, State of South Dakota, marked Exhibit "A", is justly due and owing to the said Governor, Farm Credit Administration. That no payments have been made thereon which are not credited upon said claim, and that there are no set-offs or counter-claims to it to the knowledge of claimant or affiant. That this affidavit is not made by the claimant because, since claimant, Governor, Farm Credit Administration, is acting as the agent of the United States in making and collecting loans to farmers throughout the United States, it would be physically impossible for claimant, Governor, Farm Credit Administration, personally, to file claims and perform other tasks in connection with the administration and collection of the loans he has been authorized to make and collect by Congress of the United States. That this loan was made under the personal supervision of affiant or his predecessors in office and he has under his control and in his charge all the records of this account and is therefore qualified to make a correct statement of the amount due the Governor, Farm Credit Administration, from the deceased.

That with regard to any loan granted by the Secretary of Agriculture, the Governor of the Farm Credit Administration is successor in interest to the Secretary of Agriculture by virtue of an Executive Order of the President of the United States dated March 27, 1933, and section 5 (a) 2 of title I of the Farm Credit Act of 1933.

John T. Ashford,
JOHN T. ASHFORD,
Regional Manager.

Subscribed and sworn to before me this 28the day of February 1942.

[SEAL] ROSE K. WEEKS, formerly Rose C. Knapp,
Notary Public.

My commission expires March 1, 1947.

6 WILLIAM BUTTKE, R. 1, CORONA, S. DAK.

47–55–19–13—34W 77527

Form 3–A–1934 E. C. L.

(This instrument given to the Governor, Farm Credit Administration acting pursuant to the act of Congress approved February 23, 1934.)

PROMISSORY NOTE

$80.00. SUMMIT, S. DAK., *August 13, 1934.*

On or before August 31, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of eighty dollars, with interest thereon at the rate of five and one half per centum (5½%) per annum until paid.

This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property.

County: Roberts.
State: South Dakota.

(S) WILLIAM BUTTKE. [SEAL]

7 WM. BUTTKE, RFD 1, CORONA, S. DAK.

47–55–20–13—34D 325176

Supplemental.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00. SISSETON, S. DAK., *March 11, 1935.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order

at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

8 WM. BUTTKE, RFD 1, CORONA, S. DAK.

47-55-20-13—34D 325176

Supplemental.

Loan approved for $50.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00.

SISSETON, S. DAK., *January 31, 1935.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

9 WM. BUTTKE, R. 1, CORONA, S. DAK.

34D 325176—47-55-20-13

Supplemental.

Form 3 FD (1934 ECL.)

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$50.00.

SISSETON, S. DAK., *December 12, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Fifty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

10 WM. BUTTKE, RFD 1, CORONA, S. DAK.

34D 325176 47–55–20–13

Supplemental.

Loan approved for $30.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL)

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$100.00.

SISSETON, S. DAK., *November 5, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington D. C., the sum of One hundred and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.
State: South Dakota.

(S) WM. BUTTKE. [SEAL]

11 WM. BUTTKE, ROUTE 1, CORONA, S. DAK.

34D 325176 47–55–20–13

Supplemental.

Loan approved for $40.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00. SISSETON, S. DAK., *September 10, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.

State: South Dakota.

(S) WM. BUTTKE. [SEAL]

12 WILLIAM BUTTKE, ROUTE 1, CORONA, S. DAK.

47-55-20-13—34D 325176

Loan approved for $40.00. Borrower notified of reason for reduction.

Form 3 FD (1934 ECL).

(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934.)

PROMISSORY NOTE

$80.00. SISSETON, S. DAK., *July 20, 1934.*

On or before November 1, 1935, for value received, I promise to pay to the Governor of the Farm Credit Administration, or order, at Washington, D. C., the sum of Eighty and no/100 dollars with interest thereon at the rate of five and one-half per centum (5½%) per annum until paid. This note is given as evidence of a loan made by the Governor of the Farm Credit Administration.

County: Roberts.

State: South Dakota.

(S) WM. BUTTKE. [SEAL]

13 In County Court of Roberts County

[Title omitted.]

Final report, petition for settlement, and discharge of administrator

Filed Sept. 16, 1942

Comes now George G. Remund, the duly appointed, qualified, and acting administrator of the above-entitled estate and respectfully submits to the County Court of Roberts County, South Dakota, his final report of his acts and doings from the date of his appointment to the date of this report.

That Wilhelm Buttke, Jr., also known as Wilhelm Buttke, died on December 26, 1941, in Garfield Township, Roberts County, South Dakota, and was at the time of his death a resident of said Township, County, and State.

That since the appointment of said administrator he has come into possession of the following real and personal property:

REAL PROPERTY

The Northeast Quarter, except 1.4 acres for Right of Way of the Chicago, Milwaukee, and St. Paul Railroad, in Section 27, Township 122 North, Range 49, West of the Fifth Principal Meridian in Roberts County, South Dakota; and that part of the Southeast Quarter lying North and East of the Right of Way of the Chicago, Milwaukee and St. Paul Railroad, in Section 27, Township 122 North, Range 49, West of the Fifth Principal Meridian, Roberts County, South Dakota.

PERSONAL PROPERTY

Nineteen milch cows, 8 heifers, two years and older, 13 heifers and steers, one year and over, 3 summer calves, 20 pigs, weight about 50 lbs. and under, 1 team of horses, one 10 yrs. and one 20 yrs, 1 Ford V8 automobile, 1936 model, 1 Model B John Deere Tractor, 5 years old, other old farm machinery and articles.

That after the appointment of the undersigned administrator, the widow of said deceased filed with this Court her petition, petitioning the Court to set off to her as her homestead exemp-

14 tion the Northeast Quarter of Section 27, Township 122 North, Range 49, except right of way, as aforesaid. Said land being the property that was used by the deceased and his family during his life time as their homestead.

The above-mentioned widow petitioned said Court to set off to her as her personal property exemption the following: 4 roan cows,

2 red cows, 2 white cows, 4 guernsey cows, 6 brood sows, 4 black and 2 white, 1 Ford V-8 automobile, 1936 Model.

That the above-entitled Court, under order dated June 17, 1942, set off to the said widow and minor children the said Northeast Quarter of Section 27, Township 122 North, Range 49, and the said personal property, which the said widow had petitioned and requested be set off to her as her said property exemption.

That in compliance with said Petition and Order, the undersigned administrator, did on July 8, 1942, sell all of the personal property belonging to said estate at public auction, and received for the same the total sum of $2,655.95.

That on and prior to said sale the undersigned administrator sold 20 pigs on the open market, for which he received the sum of $403.74.

That after the sale of the personal property at public auction under order of said Court, said administrator made his verified report and return of same, which has been duly approved by the County Court of Roberts County, South Dakota, and filed in the office of the Clerk of said Court, for further particulars, reference is made thereto.

That said estate has been fully probated and is now ready for final settlement and distribution.

That due and legal notice to creditors has been given, that more than six months have elapsed since the first publication of said Notice, and that a Decree of this Court has been made and entered showing Due and Legal Notice to Creditors has been given.

That the expenses of last sickness, funeral expenses, and all costs of administration have been fully paid.

That a Certificate that no Income Tax is due from said estate has been issued by the Division of Taxation of the State of South Dakota, and said Certificate is now on file in the office of the Clerk of the above-entitled Court; that the said Division of Taxation has likewise found that there was no inheritance tax due from said estate, and that the Court has made and entered its Order to that effect.

That said administrator further reports that all other taxes found to be due from said estate have been fully paid.

That the only property remaining in the hands of said administrator at this time is: That part of the Southeast Quarter lying North and East of the Right of Way of the Chicago, Milwaukee and St. Paul Railroad, in Section 27, Township 122 North, Range 49, West of the Fifth Principal Meridian, as aforesaid. That this land together with the said Northeast Quarter of Said Section is mortgaged to the Federal Land Bank in the sum of $6,000, and that a lien covers the whole of said land.

That the said Northeast Quarter has been set off to the widow and minor children as their homestead. That the said widow and minor children are entitled to a homestead exemption in the sum of $5,000. That all of the real property belonging to said estate is encumbered by a mortgage of $6,000. That by reason of such mortgage and such homestead exemption there is no equity remaining in that part of the Southeast Quarter lying North and East of the Right of Way of the Chicago, Milwaukee and St. Paul Railroad in said Section 27. That the same is of no value to the creditors hereinafter mentioned.

That the said deceased left surviving him as his heirs at law and next of kin the following: Erna Buttke, Widow, Grace Buttke, Daughter, Gilbert Buttke, Son, Leonard Buttke, Son.

That the undersigned administrator has paid the costs of administration and expenses of sale as follows:

Wilmot Enterprise—Notice of Hearing Petition and Notice to Creditors	$14.45
Notice of Sale	6.65
Clerk of Courts—Filing	15.00
Filing Fees to be incurred	3.00
Appraisal Fees	6.00
Administrator-expenses incurred for gas, postage, etc	7.50
Administrator's fees	132.38
Attorney's Fees	175.00
Total Cost of Administration	359.98

16 That the undersigned administrator incurred costs of sale in the amount of $1,305.07, leaving a balance remaining with him from said sale $1,350.88. That there has been filed by the undersigned administrator claims against said estate which with interest at this date are in the amounts herinafter set out:

United States Department of Agriculture—Emergency Crop and Feed Loans—two Notes		$412.94
	and	110.86
G. M. Phillips Estate		744.43
Wm. Buttke—two notes		723.33
	and	465.00
Whet Stone Valley Electric Association & Corporation		125.86
Note—Mable Rohlfs		1,556.25
Ray C. Sample—Note		3,703.69
F. W. Wilde—Note		1,399.33
Total		9,241.60

RECAPITULATION

Receipts received from—		
Public Sale		$2,655.95
Sale of pigs		403.74
Costs of administration	$359.98	
Costs incurred on sale	1,305.07	
Balance	1,394.64	
	3,059.69	3,059.69

That there is insufficient funds to pay said claims in full. That the undersigned administrator is of the opinion that all of the said claims are of equal rank and should be paid pro rata and that the said creditors are entitled to payment on their said claims as follows:

United States Department of Agriculture—Emergency Crop and Feed Loans	$79.53
G. M. Phillips Estate	112.33
Wm. Buttke	179.31
Whet Stone Valley Electric Association & Corporation	18.59
Mable Rohlfs	234.85
Ray C. Sample	558.87
F. W. Wilde	211.16

Wherefore, the undersigned administrator respectfully submits the foregoing report and petitions the above entitled Court that it fix a day for hearing this report and approving same; for making payment on the claims filed against said estate according to the amounts that the creditors may be entitled to receive; for making distribution of the property belonging to said estate and for the discharge of the undersigned administrator and release of his bondsmen from further liabilities in said matter.

GEORGE G. REMUND,
Administrator.

17 [*Duly sworn to by George G. Remund; jurat omitted in printing.*]

[File endorsement omitted.]

18 In County Court of Roberts County

In the Matter of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, Deceased.

Order approving final report, final decree and discharge of Administrator

Filed Nov. 2, 1942

George B. Remund the duly appointed, qualified, and acting administrator of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, deceased, having filed with this Court his duly verified Final Report and account as administrator of said estate, setting forth that said estate had been fully administered; that the property belonging to said estate was ready for distribution and praying the Court for a hearing thereon; and upon approval of said report and distribution of the property belonging to said estate that he be discharged as such administrator.

At the time that said report was filed with this Court, the Court made and entered its Order and Notice, dated and filed on September 16, 1942, fixing the 29th day of September 1942, at the hour of 1:30 o'clock in the afternoon at the County Court Rooms in the Court House in the City of Sisseton, County of Roberts and State of South Dakota, as the time and place for hearing thereon.

That the said matter coming on regularly to be heard at the time and place fixed therefor. George G. Remund, the administrator, appearing by his attorneys, Turner & McKenna, and the United States Department of Agriculture, Emergency Crop and Feed Loans, appeared by their attorney, Leo P. Flynn. It appearing to the Court that due and legal notice of said hearing had been given as required by law and order of this Court, as more particularly appears by the Affidavit of Mailing and Posting of Marjorie Benjamin.

That the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, appearing at said hearing by the said Leo P. Flynn, as aforesaid, for the purpose of protesting to the allowance of its claim as a common creditor and requested and demanded of the Court that the said claim be allowed as a preferred claim.

That there were no further objections or protests made or filed to said report and that no other persons or claimants appeared or entered any objections to the report of said administrator.

19 After listening to the arguments of Counsel on the request that the said United States Department of Agriculture's claim be allowed as a preferred claim, it was agreed by Counsel that the hearing on said matter be continued to October 30th, 1942, at the hour of 10:00 o'clock in the forenoon. At the time to which said hearing was continued the matter came on regularly to be heard, Turner & McKenna appearing for the administrator, and Leo P. Flynn appearing for the said United States Department of Agriculture, protesting creditor. The Court having heard arguments of Counsel on said issue and the said Counsel having filed their briefs with this Court, the Court having carefully considered the same.

It is the order of this court that the said application upon motion of the said United States Department of Agriculture that its claim be allowed as a preferred claim, be and the same is hereby rejected and denied. The said claim is hereby allowed as a common creditor and the said administrator is directed to pay the said claim on the same percentage basis as all other common creditors.

It further appearing to the Court that due and legal notice to creditors has been given and that a decree of this Court has been made and entered showing such fact. That the claims of last sick-

ness and funeral expenses have been paid. That the administrator has made his inheritance tax report to the Division of Taxation of the State of South Dakota and that the said division has stipulated that said estate is exempt from payment of such tax.

It further appearing that the Division of Taxation has also entered its certificate that no income tax is due from said estate.

It further appearing to the Court that the costs of administration of said estate have been paid. That more than six months have elapsed since publication of Notice to Creditors. That said estate is ready to be closed and decree of distribution may be entered by the Court.

It further appearing to the Court that the following claims have been allowed in the following amounts:

United States Department of Agriculture—Emergency Crop and Feed Loans—two notes	$412.94 and $110.86
G. M. Phillips Estate	744.43
Wm. Buttke—two notes	723.33 and 465.09
Whetstone Valley Electric Association and Corporation	125.86
Mable Rohlfs	1,556.25
Ray C. Sample	3,703.69
F. W. Wilde	1,399.33

It further appearing to the Court that the following described property came into the hands of the administrator as such officer:

20 REAL PROPERTY

The Northeast Quarter except 1.4 acres for right of way of the Chicago, Milwaukee & St. Paul railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian and that part of the Southeast Quarter lying North and East of the right of way of said railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian, all in Roberts County, South Dakota.

PERSONAL PROPERTY

Personal property as shown in the inventory and appraisement, which personal property has been sold by the said administrator and said sale confirmed, approved, and allowed by this Court.

It further appearing that the widow of said deceased, Erna Buttke, has selected the Northeast Quarter of Section 27, Township 122 North, Range 49, except railroad right of way, as her homestead and also selected personal property shown in the Final Report as her personal property exemption. That said selection of exemptions have by order of this Court been approved and

allowed. That all of the real property hereinbefore described is mortgaged to the Federal Land Bank in the sum of $6,000, under one mortgage. That there is no equity in that part of the South-east Quarter lying North and East of the said Chicago, Milwaukee & St. Paul railroad in Section 27, Township 122 North, Range 49, aforesaid, and by reason of said mortgage, cannot be separated and sold.

That it further appears to the Court that after paying the expenses of administration, taxes, and preferred claims against said estate, that the administrator has a cash balance on hand in the sum of $1,394.64, to be paid to the Creditors having claims against said estate.

Now therefore, it is the order and decree of this court that all preferred claims against said estate including taxes, expense of last sickness and funeral expense, and costs of administration have been paid. That there is no inheritance tax due from said estate and that no income tax is due from said estate.

It is the further order and decree of this court that due and legal notice to creditors has been given as required by law.

It is the further order and decree of this court that the said report of said administrator is in due form of law and that no objections have been made or filed to the same, except as hereinbefore stated in this report. The said report is hereby approved and allowed in all things.

It is the further order and decree of this court that the claims hereinbefore mentioned and which have been approved and allowed by the administrator and this Court, be paid to the creditors in the following amounts, to wit:

21	United States Department of Agriculture—Emergency Crop and Feed Loans	$79.53
	G. M. Phillips Estate	112.33
	Wm. Buttke	179.31
	Whetstone Valley Electric Association & Corporation	18.59
	Mable Bohlfs	234.85
	Ray C. Sample	558.87
	F. W. Wilde	211.16

It is the further order and decree of this court that the persons who are entitled to inherit the property of said estate and who are the heirs at law and next of kin of the said Wilhelm Buttke, Jr., also known as Wilhelm Buttke, deceased, as follows: Erna Buttke, widow; Grace Buttke, daughter; Gilbert Buttke, son; Leonard Buttke, son; and that they are entitled to inherit the said estate in the following amounts: Erna Buttke, an undivided ⅓ interest; Grace Buttke, Gilbert Buttke, and Leonard Buttke, each an undivided ⅔ interest.

Now therefore, it is the order and decree of this court that the real property hereinbefore described as: The Northeast Quarter, except 1.4 acres for right of way of the Chicago, Milwaukee & St. Paul railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian, and that part of the Southeast Quarter lying North and East of the right-of-way of said railroad in Section 27, Township 122 North, Range 49 West of the Fifth Principal Meridian, all in Roberts County, South Dakota, be and the same is hereby assigned to and vested in the following named persons in the following amounts: Erna Buttke, widow, an undivided $\frac{1}{3}$ interest; Grace Buttke, daughter, an undivided $\frac{2}{9}$ interest; Gilbert Buttke, son, an undivided $\frac{2}{9}$ interest; Leonard Buttke, son, an undivided $\frac{2}{9}$ interest; subject, however, to the homestead right of the said Erna Buttke and minor children until they reach the age of 21 years. The said Erna Buttke to retain her homestead right in the said Northeast Quarter of Section 27 so long as she chooses to remain thereon and use the same for said homestead purposes; they to have and hold all the right, title and interest in and to said property that the said deceased had at the time of his death, or any interest that his estate has acquired therein since that date.

It is the further order and decree of this court that the personal property heretofore set off to the said widow and minor children be held and retained by them as their separate individual property free from any claims or charges against said estate.

It is the further order and decree of this court that the said estate has been fully administered; that the Final Report has by this decree been fully allowed; that all claims filed against said estate so far as the estate has funds to pay have been paid and discharged; that the property belonging to said estate has been distributed to the persons entitled to receive the same; that said estate is now closed and that the administrator and his bondsmen be and the same are hereby discharged and released from all further liability upon his filing with this Court vouchers of all the funds shown in his report to be in his hands.

Dated this 31st day of October, 1942.

By the Court:

A. O. RUNDE, *Judge.*

Attest:

[SEAL] JOHN A. KOEPPE, *Clerk.*

[File endorsement omitted.]

23 In County Court of Roberts County

[Title omitted.]

Notice of Appeal

Filed Dec. 1, 1942

To GEORGE B. REMUND, *the Administrator of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, and to Turner and McKenna, Attorneys for the Administrator:*

Notice is hereby given that the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, being the owner and holder of a claim duly filed within the time required by law for valuable consideration against the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, in the amount of $412.94 and $110.86, all of said claims having been duly filed against said estate within the time as required by law, and United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration being the present owner of said claims, and as such claimant does hereby appeal to the Circuit Court in and for the County of Roberts, State of South Dakota, from the "Order Approving Final Report, Final Decree and Discharge of Administrator," entered by the County Court of Roberts County, State of South Dakota, in the above-entitled estate, which Order
24 was dated the 31st day of October 1942, and duly filed in the office of the Clerk of Courts in and for Roberts County on the 2nd day of November 1942.

That this appeal is taken upon the grounds that the County Court of Roberts County, South Dakota, in the above-named estate, by said Order, did order, adjudge, and decree, pursuant to an Order of hearing herein allow as a common claim or as a common creditor, the claims of the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, and that said claims aforementioned should have been allowed as requested and demanded of the Court as preferred claims, according to the provisions of priority as set forth under Section 191, Title 31, United States Code Annotated; that the said United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, feeling aggrieved thereby hereby notifies you that it appeals from said Order to the Circuit Court, and said appeal will be taken from said Order upon the question of law and fact.

Dated at Sioux Falls, South Dakota, this 27th day of November 1942.

GEORGE PHILIP,
United States Attorney for the District of South Dakota.
JOHN T. HEFFRON,
LEO P. FLYNN,
Assistants,
Attorneys for United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration.

Address: 211 Federal Building, Sioux Falls, South Dakota.
[File endorsement omitted.]

In the Circuit Court of Roberts County

U. S. DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, RESPONDENT

Order sustaining allowance of claims

Dec. 9, 1943

The U. S. Department of Agriculture, Emergency Crop and Feed Loans, having filed two claims in the County Court of Roberts County, South Dakota, in the above-entitled estate, which were, at the date of the filing of the Final Report of the administrator, in the sum of $412.94 and $110.86. Said claims were founded upon separate notes to the said Emergency Crop and Feed Loan, U. S. Department of Agriculture.

Said administrator allowed said claims, and in his Final Report, there being insufficient money to pay all creditors in full, the administrator allowed said claims pro rata with the other claims filed against said estate; and the said two claims of the U. S. Department of Agriculture were allowed in the sum of $79.53. Upon the hearing of said claims in County Court of Roberts County, South Dakota, said Court approved the allowance of the said administrator and approved payment to the said Department of Agriculture in the sum of $79.53.

The U. S. Department of Agriculture feeling aggrieved by said allowance of said claims, within the time allowed by law, appealed said matter to the Circuit Court of Roberts County, South Dakota. Thereafter said matter coming on regularly to be heard at the time

and placed fixed therefor, on the 28th day of October 1943, at 11:00 o'clock in the forenoon at the Circuit Court rooms in the Court House in the City of Sisseton, Roberts County, South Dakota,

Leo P. Flynn, Assistant U. S. Attorney, appearing for the
27 Appellant, U. S. Department of Agriculture, Emergency Crop and Feed Loans, and Turner & McKenna appearing for the Respondent, George G. Remund, Administrator of the Estate of Wilhelm Buttke, deceased, and the Court having heard the arguments of Counsel in said matter and having examined all of the records and files in said matter and being fully advised in the premises and upon the evidence submitted therein,

It is the order of this court that the Order approving the allowance of said claims pro rata with the other claims filed against said estate and directing the administrator to pay to the appellant its pro rata share of the money in his possession in the sum of $79.53 be and the same is hereby in all things affirmed and said allowance and direction that the sum of $79.53 be paid to said administrator is hereby sustained and said administrator is directed to pay said amount, and upon such payment the administrator be released from further liability in the matter of said claims as such administrator.

Dated this 9th day of December 1943.

By the Court:

HAROLD W. KING, *Judge.*

[File endorsement omitted.]

28 In the Circuit Court of Roberts County

[Title omitted.]

Notice of Appeal to Supreme Court of South Dakota

Filed Feb. 7, 1944

To GEORGE B. REMUND, *the Administrator of the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, and to Turner and McKenna, Attorneys for the Administrator:*

Notice is hereby given that the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, being the owner and holder of a claim duly filed within the time required by law for valuable consideration against the Estate of Wilhelm Buttke, Jr., also known as Wilhelm Buttke, in the amount of $412.94 and $110.86, all of said claims having been duly filed against said estate within the time as required by law, and United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration being the present owner of said claims, and as such claimant does hereby appeal to the Supreme

Court of the State of South Dakota, at Pierre, South Dakota, from the Order of the Circuit Court of the Fifth Judicial Circuit signed by Harold W. King, Judge of said Circuit, dated December 9th, 1943, and filed in the office of the Clerk of Courts of
29 Roberts County, South Dakota, on the 13th day of December 1943, sustaining the Order Approving Final Report, made and ordered by the County Court of Roberts County, signed by A. O. Bunde, Judge of said County Court of said County and State, dated October 31st, 1942, and filed in the office of the Clerk of Courts in and for Roberts County, South Dakota, on the 2nd day of November 1942.

That this appeal is taken upon the grounds that the Circuit Court of the Fifth Judicial Circuit, by the Order signed by Judge Harold W. King, sustaining the Order of the County Court, did adjudge and decree and allow as a common claim or as a common creditor, the claims of the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, and that said claims aforementioned should have been allowed, as requested and demanded of the Court, as preferred claims, according to the provisions of priority as set forth under Section 191, Title 31, United States Code Annotated, and that the United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, feeling aggrieved thereby, hereby notifies you that it appeals from the whole of said Order of the Circuit Court to the Supreme Court of the State of South Dakota, and said appeal will be taken from said Order upon the question of law and fact.

30 Dated at Sioux Falls, South Dakota, this 4th day of February 1944.

GEORGE PHILIP,
United States Attorney for the District of South Dakota.
LEO P. FLYNN,
Assistant,
Attorneys for United States Department of Agriculture, Emergency Crop and Feed Loans, or Governor of the Farm Credit Administration, Appellant.

Address: 211 Federal Building, Sioux Falls, South Dakota.

Service of the above Notice of Appeal is hereby admitted this 7th day of February 1944, at Sisseton, South Dakota, by receipt of a true copy thereof.

TURNER & MCKENNA,
By FRANK R. MCKENNA,
Attorneys for Administrator.

[File endorsement omitted.]

[Clerk's certificate to following paper omitted in printing.]

32 In the Supreme Court of South Dakota

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DECEASED, U. S. DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED; RESPONDENT

Opinion

Filed May 20, 1946

Appeal from the Circuit Court of Roberts County, South Dakota

Honorable HAROLD W. KING, Judge

33 George Philip, United States Attorney, Rapid City, South Dakota.

Leo P. Flynn, Assistant U. S. Attorney, Sioux Falls, South Dakota.

Matthew A. Brown, Assistant U. S. Attorney, Chamberlain, South Dakota, Attorneys for Appellant.

Turner & McKenna, Sisseton, South Dakota, Attorneys for Respondent.

WARREN, Circuit Judge:

This is an appeal from an order of the Circuit Court of Roberts County, which affirmed an order of the County Court of that county and which orders denied a preference to the plaintiff, appellant, over certain other creditors in the Estate of Wilhelm Buttke, Deceased, the Administrator of his estate being the defendant, respondent, herein. The plaintiff's claim was filed in the amount of $523.80. The Final Report of the administrator showed the estate to be highly insolvent. The claims filed against the estate and to be paid aggregated $9,241.60 and the Final Report showed there was a balance on hand available to creditors in the amount of $1,394.64. The administrator sought to pro rate the amount on hand among all creditors, including the plaintiff, and the County Court so ordered and its order was affirmed by the Circuit Court.

The claim of the plaintiff is based upon seven notes all dated between July 28, 1934 and March 19, 1935, with maturity dates from August 31, 1935 to November 1, 1935 and all notes drawing interest at 5½% payable annually. All of the notes are made payable to "Governor Of The Farm Credit Administration, or Order, Washington, D. C." All of these notes are in the usual form of a promissory note, except in the following particulars:

Six of the notes have printed at the top the following:
34 "(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved June 19, 1934.)"

At the bottom of these six notes there appears the following: "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration."

On one of the notes the following is printed at the top: "(This instrument given to the Governor, Farm Credit Administration, acting pursuant to the Act of Congress approved February 23, 1934.)"

At the bottom of this note there is printed the following: "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property."

Accompanying the claim as filed there is an instrument designated "Memorandum" which asserts the claim is to be preferred under the laws of the United States and there is quoted in full Sections 3466 and 3467 R. S. (31 U. S. C. § 191, § 192).

The claim as filed by the plaintiff was approved by the administrator for its full amount, including interest.

The Federal Priority Statutes relied upon by plaintiff were enacted in 1797 and have come down to the present time with no material changes and read as follows:

R. S. 3466, 31 U. S. C. A. § 191:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well
35 to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

R. S. 3467, 31 U. S. C. A. § 192:

"Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

Our State Statute establishes order of priority and payment of claims at SDC 35.1422 as follows:

"35.1422 Order of payment of claims. All demands against the estate of any deceased person must be paid in the following order:

"(1) The expenses of administration;

"(2) Funeral expenses, including reasonable cost of burial lot, and not to exceed fifty dollars for marker on grave;

"(3) The expenses of last sickness;

"(4) Any debt that may be due by decedent personally to servants and employees for services rendered within the sixty days next preceding his death;

"(5) Debts having preference by the laws of the United States;

"(6) All other demands against the estate, except that where a lien for any demand exists by mortgage, pledge, attachment, judgments, or execution levy, such lien shall have preference according to its priority to the extent of such demand, on any specific property on which such lien shall have attached."

Plaintiff's claim is not filed in the name of the United States of America. It can be treated as a claim filed by the United States of America only by inference, explanation and argument. In plaintiff's brief the claim is characterized as being filed by

36 "The United States of America, Department of Agriculture, Farm Credit Administration, through the Governor of the Farm Credit Administration * * * based upon loans administered by the Emergency Crop and Feed Loan Office. * * *."

Plaintiff asserts its claim should have priority because the loans were made under an Act of Congress intended for the relief of drouth and storm stricken farmers who could not obtain credit from privately owned loaning organizations, and that the act of making loans was a benevolence on the part of the Government. It is claimed the rate of interest provided for in the notes is below the ordinary commercial rate.

Defendant insists priority should not be granted and contends that the Government is not acting in its sovereign capacity in going into the money loaning business and for profit in competition with private business. Defendant further contends that this court may take judicial notice that the lending of money under the setup under which the instant loans were made has ever since continued and that such loans are being made at this time in competition with private capital and long after any emergency ceased to exist; thus placing the Government in competition with private business when ample private capital is available and thus indicating that the Government is in the private loaning business and for profit. Defendant also claims that the general rule is that Governments in creating corporations or agencies to carry on functions for it does not invest them with special privileges unless granted in the statute creating them.

Defendant also contends the act under which the loans were made is an Act of Congress setting up the Farm Credit Administration with the privilege of transacting business as such, with the right to sue and be sued exactly as any other corporation or organization doing business for profit. The plaintiff contends there is nothing in the act which provides that the Farm Credit Administration may sue or be sued. However this may be, it may
37 be observed that in this case the plaintiff is using the courts of the state in litigation to protect its interests. The court may also take judicial notice that many claims of this character have actually been sued in the courts, exemplifying that the plaintiff at least would interpret the act as giving authority for the plaintiff to sue.

The Act of Congress authorizing the loans in this case was approved February 23, 1934, Vol. 48, Part 1, U. S. Stat. at Large 354, and brief reference to some of its provisions may be made.

It is designated as "An Act To provide for loans to farmers for crop production and harvesting during the year 1934, and for other purposes."

Section 1 provides that the "Governor of the Farm Credit Administration" is authorized to make the loans to farmers.

Section 2 provides as security for the loans a "first lien" on all crops planted during the year 1934 or on livestock. The Section further provides the loans shall be made "through such agencies, upon such terms and conditions, and subject to such regulations as the Governor shall prescribe." The maximum rate of interest on the loans is not to exceed 5½% per annum, no minimum rate being set. There is also set up a very efficient collection service, it being provided the Governor may use the facilities and services of the Farm Credit Administration or of any of its officers and that the Governor may pay for such facilities; and further provides that "such institutions" are expressly empowered to enter into agreements with the Governor for such purposes. A maximum loan of $250.00 is provided except that in the discretion of the Governor he may make the loan $400.00 and the further exception that the loan shall be unrestricted in those areas that have been certified by the President of the United States to the Governor as distressed emergency areas.

38 Two conditions must exist for the applicant to obtain a loan. First he must show that he is unable to procure a loan from other sources in an amount reasonably adequate for his needs; and second, the applicant must certify that he is directly cooperating in the crop production program of the Agricultural Adjustment Act or that he is "not proposing to increase his 1934 production of basic agricultural commodities in a manner detrimental to the success of such program."

Section 3 provides that the moneys loaned are declared to be impressed with a trust to accomplish the purposes provided for in the act "until the moneys loaned pursuant to this Act have been used for the purposes contemplated by this Act, * * *".

Section 4 invests the Governor with very wide authority and power to set up the loaning structure. Even without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States the Governor may fix the compensation and duties of the agents, officers and employees that may be necessary to carry on the purposes of the Act.

Section 5 provides for an appropriation of forty million dollars to carry out the provisions of the Act and the Act concludes with the following:

"Any moneys so appropriated, and all collections of both principal and interest on loans made under this Act, may be used by the Governor for all necessary administrative expenses in carrying out the provisions of this Act and in collecting outstanding balances on crop production, seed and feed loans * * *".

The Act of Congress just considered appears to set up a complete loaning agency with wide powers in the Governor, as to its operation, and with an appropriation of money from the Government to sustain the organization. Subsequent legislation has continued in one form or another the loaning of money to farmers under the Farm Credit Administration, the system
39 of loaning still existing.

Plaintiff's counsel contends there should be priority of the claims, based upon a loan made under the foregoing Act. Considering the claim as it relates to our State Statute in the order of payment, the expenses of administration and burial expenses would have priority over the plaintiff's claim. The plaintiff's claim would have preference over classes 3 and 4 of our statute which are the expenses of last sickness and debts due by the decedent to servants and employees for services rendered within sixty days preceding his death. The question here to be determined is whether the plaintiff's claim should be designated within class 5 under our state law as a debt having preference by the laws of the United States or whether it should be in class 6 applying to general creditors.

In Sloan Shipyards Corporation et al. v. United States Shipping Board Emergency Fleet Corporation and the United States of America, 258 U. S. 549, 66 L. Ed. 762, there are three cases combined, all bringing into question the standing of the United States Shipping Board Emergency Fleet Corporation in the courts; one of the cases involving directly the right of priority over the other creditors in bankruptcy by the Fleet Corporation. The Shipping

Act of Sept. 7, 1916, being Chap. 451, 39 Stat. at L. 728, Comp. Stat. § 8146a Fed. Stat. Anno., Supp. 1918 P. 785, was passed in contemplation of the possibility of war and to create a naval reserve and merchant marine, and under it the United States Shipping Board was established, and given power to form a corporation under the laws of the District of Columbia, and it did organize the United States Shipping Board Emergency Fleet Corporation. The Act contemplated that the corporation named should be organized so that private persons might be minority stockholders, the Shipping Board to be a majority stockholder. However, the United States purchased all of the stock, thereby furnishing all of the money for this governmental agency. This corporation filed its claim with the trustee in bankruptcy of the Eastern Shore Ship Building Corporation and claimed priority over other creditors, all of the money of the corporation having been furnished by the Government. This priority was denied by the referee in bankruptcy, the District Court and the Circuit Court of Appeals and affirmed in the opinion written by Justice Holmes from which we quote the following:

"The third case, as we have said, is a claim of priority in bankruptcy. It was asserted against the estate of the Eastern Shore Shipbuilding Corporation, in the district court for the southern district of New York, under a contract similar to that last described, made by that company with the Fleet Corporation, 'representing the United States of America,' to construct six harbor tugs. The claim was presented by the Fleet Corporation in its own name, but was put forward by it as an instrumentality of the government of the United States. It was denied successively by the referee, the district court, and the circuit court of appeals, on the grounds that the Fleet Corporation was a distinct entity, and that, whatever might be the law as to a direct claim of the United States, the Fleet Corporation stood like other creditors and was not to be preferred. 274 Fed. 893. The considerations that have been stated apply even more obviously to this case. The order is affirmed."

To the foregoing decision Chief Justice Taft filed a dissenting opinion as it related to the first and second cases under consideration, but in which he concurs with the decision in the third case which involved the question of priority. He limits the preference or priority of the United States in bankruptcy to claims of the United States for taxes and we quote the following from his dissenting opinion:

"As to the preference claimed against a bankrupt in No. 526 by the Fleet Corporation, I concur in the conclusion of the court that it cannot be allowed under the statute as to preferences

41 in bankruptcy because I do not think it extends to claims of the United States except those for taxes."

In the case of United States of America v. Guaranty Trust Co of New York et al,, 280 U. S. 478, 74 L. Ed. 556, the Supreme Court was considering the right of priority of the United States over other creditors under Revised Statutes, § 3466 U. S. C. A., Title 31, § 191. During World War I when the railroads were under Federal control the railroad transportation system became in distress financially. Title 2 of the Transportation Act of 1920 provided for the loaning of enormously large amounts to meet the pressing need of the railroads. These loans to the railroads were made to them directly by the United States and not through any of the corporate or other fiscal agencies of the United States handling business for it. The Minneapolis & St. Louis Railroad had obtained one of these loans and in 1923 the Federal Court of Minnesota appointed a receiver of it and the usual order issued for proof of claims. It was conceded the railroad was insolvent. The United States presented four claims arising under Title 2 of the Transportation Act of 1920 and as to each claim it asserted that that it was entitled to priority and preference over the claims of all other creditors under the priority statute. Upon adverse decisions by the master and the district court and in the circuit court of appeals the case was presented to the Supreme Court. In upholding the decisions below and denying the preference to the United States we quote the following from this decision:

"These appropriations were made in order to meet a pressing need. At the time of the passage of Transportation Act 1920, most of the railroads of the United States lacked funds for necessary improvements, equipment, and expansion of facilities. Some of the carriers needed funds, also, to meet maturing obligations. The credit of many carriers was seriously impaired. There was a general reluctance among investors to purchase new railroad securities even of the strongest railroads. Congress deemed it important to preserve for the nation substantially the whole existing transportation system. Compare New England
42 Divisions Case (Akron, C. & Y. R. Co. v. United States) 261 U. S. 184, 190, 67 L. Ed. 605, 609, 43 Sup. Ct. Rep. 270. In order to accomplish this, it was thought necessary that the United States should, to a certain extent, finance the carriers until it would become possible to restore their credit, by increase of rates or otherwise. The provisions of title II. of Transportation Act 1920 were framed to that end. Through them, the financial aid which had been given during Federal control was to be extended for a further period.

"To have given priority to debts due the United States pursuant to title II would have defeated the purpose of Congress.' It not only would have prevented the reestablishment of railroad credit among bankers and investors, but it would even have seriously impaired the market value of outstanding railroad securities. It would have deprived the carriers of the credit commonly enjoyed from supply men and others; would have seriously embarrassed the carriers in their daily operations; and would have made necessary a great enlargement of their working capital. The provision for loans under § 210 would have been frustrated. For carriers could ill afford voluntarily to contract new debts thereunder which would displace, pro tanto, their existing bonded indebtedness. The entire spirit of the act makes clear the purpose that the rule leading to such consequences should not be applied."

The facts in the foregoing decision are practically an exact parallel with the case we have under consideration. In one case the Government loaned money direct to the needy railroads to assist and sustain the transportation system, and in our case the money was loaned to needy farmers with the thought of assisting and sustaining agriculture which was in distress. The reasons given why the United States should not claim priority in this case are equally pertinent in our case under consideration, as knowledge of priority of Government claims certainly would have been a handicap to a farmer in using his credit with local bankers and investors. We consider this decision controlling in this case.

Without discussion of them the following supporting decisions are cited: Keifer & Keifer, a copartnership v. Reconstruction Finance Corporation and Regional Agricultural Credit Corporation of Sioux City, Iowa, 306 U. S. 381, 83 L. Ed. 784; United States v. Strang, 254 U. S. 491, 65 L. Ed. 368; Eichberg v. United States Shipping Board Emergency Fleet Corporation, 273 F. 986; Luxton v. North-River Bridge Company, 153 U. S. 525, 38 L. Ed. 808; M'Culloch v. State of Maryland et al., 4 Wheat. 316, 4 L. Ed. 579; Ohio v. Helvering, 292 U. S. 360, 78 L. Ed. 1307; Davis v. Pullen (C. C. A. 1st) 277 F. 650; Guarantee Title & Trust Co. v. Title Guaranty & Surety Co., 224 U. S. 152, 56 L. Ed. 706; Lewis v. United States, 92 U. S. 618, 23 L. Ed. 513; United States v. State Bank, 6 Pet. 29, 8 L. Ed. 308; United States v. Mason, 218 U. S. 517, 54 L. Ed. 1133; La Roque v. United States, 239 U. S. 62, 60 L. Ed. 147; Bank of the United States v. Planters' Bank of Georgia, 9 Wheat. 904; 6 Ed. 244; Cook County National Bank v. United States, 107 U. S. 445, 27 L. Ed. 537; State of Georgia v. City of Chattanooga, 264 U. S. 472, 68 L. Ed. 796.

Appellant's counsel in supplemental brief cites as an authority the decision of United States of America v. Emory, 314 U. S. 423,

86 L. Ed. 315, decided Dec. 15, 1941. This decision is illuminating as disclosing the conflict of opinion that has arisen in the Federal Courts, particularly in recent years, in reference to Government priorities. It is significant to observe that this decision, written by Justice Byrnes, reverses the Circuit Court of Appeals and the decision is a five to four decision by the Supreme Court. There is a very vigorous dissenting opinion, written by Justice Reed, and Justices Roberts, Douglas and Jackson concur in the dissent. The dissenting opinion points out that: "From past interpretation we learn that the traditional function of § 3466 is the assurance of the public revenue, whatever may be the expense to the competing creditors," and that the majority opinion disturbs well settled law and precedents. The majority opinion does not pretend to overrule or reverse previous opinions of the court but seeks to explain them. The facts of this case are unusual. On September 23, 1935, the St. James Distillery, a corporation, executed a note to the Industrial Bank and Trust Company of St. Louis. On July 14, 1936, the bank endorsed the note and delivered it to the Federal Housing Administration, acting on behalf of the United States, under a contract of insurance and guaranty provided for in Title I of the National Housing Act. The United States, through the Federal Housing Administration, reimbursed the bank in the amount of $5,988.88, the balance due on the note. Emory had a claim for wages and asserted priority on his wage claim. These loans made by private investors, under the Federal Housing Act, were term loans not exceeding five years, and were guaranteed to the extent of 20% by the United States. No reason is shown in this opinion why this bank held this loan only about nine months.

In the decision of Federal Housing Administrator v. Moore, Trustee in Bankruptcy, 90 F. 2d 32, decided May 10, 1937 a claim in bankruptcy had been filed by the Federal Housing Administrator. It was based upon money that the Government had furnished to reimburse a bank that made a loan that was not fully paid. Priority over other creditors was claimed in bankruptcy. The District Court denied this preference and on appeal to the Circuit Court of Appeals from the Ninth Circuit, by the Federal Housing Administrator. Judge Matthews sustained the District Court and denied priority and in doing so used the following language:

"The contention cannot prevail. Appellant is not the United States. The United States is not a party to this proceeding. The bankrupt was never indebted to the United States. Its indebtedness was to the bank. The United States has no claim against the bankrupt estate, and has asserted none. If the United States had any such claim, it could, and undoubtedly would, assert it in its

own name. There is no reason why, in a bankruptcy court, or elsewhere, the United States should call itself 'Federal Housing Administrator'."

But, conceding that the decision written by Justice Byrnes should be considered as authority that priority should be had on a claim filed under the National Housing Act, it should be noted there is not the slightest suggestion in the decision that it would be applicable to the case we have under consideration.

45 Justice Byrnes particularly refers to and analyzes the decision of United States v. Guaranty Trust Co., supra, and recognizes and adopts its merits in assisting a financially distressed railroad transportation system. The same rule of law should apply when Government assistance is given to distressed agriculture.

We conclude it is much more logical to place the notes under consideration here within the decision of United States v. Guaranty Trust Co., supra, the facts being analogous, and deny priority, than to follow the decision of United States v. Emory, supra, where no analogy of fact appears.

Finding no error the order of the circuit court is affirmed.

Warren, Circuit Judge, sitting for Polley, J.

All the Judges concur.

[Clerk's certificate to following paper omitted in printing.]

47 In Supreme Court of South Dakota

April Term, A. D. 1946

Present: HERBERT B. RUDOLPH, Presiding Judge: E. D. ROBERTS, ST. CLAIR SMITH, and VERNON R. SICKEL, Judges of said Court, and the officers thereof:

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DEC. U. S. DEPARTMENT OF AGRICULTURE EMERGENCY CROP AND FEED LOANS, PLAINTIFF AND APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, DEFENDANT AND RESPONDENT

Judgment

Filed May 20, 1946

This action coming on to be heard at the April A. D. 1945 Term of this Court at the Supreme Court Room in the City of

Pierre, State of South Dakota, upon the merits of the case and upon argument by counsel and the Court having advised thereon and filed its decision in writing.

It is considered, ordered, and adjudged, that the order of the Circuit Court, within and for Roberts County, appealed from herein, be and the same is hereby affirmed.

And it is further ordered, that this action be and it is hereby remanded to said Circuit Court for further proceedings according to law and the decision of this Court.

And it is further ordered and adjudged, that respondent have and recover of the appellant costs and disbursements on this appeal, expended, taxed and allowed at Thirty and no/100 Dollars.

By the Court,

[SEAL] HERBERT B. RUDOLPH,
Presiding Judge.

Attest:

J. W. RAISH, *Clerk.*
By ——— ———, *Deputy Clerk.*

[File endorsement omitted.]

48 In Supreme Court of South Dakota

Remittitur

Filed June 10, 1946

Be it remembered, that at a term of the Supreme Court of the State of South Dakota, begun and held at Pierre, State of South Dakota, on the first Tuesday of April A. D. 1946, To wit: On the twentieth day of May A. D. 1946.

Present: HERBERT B. RUDOLPH, Presiding Judge; E. D. ROBERTS, ST. CLAIR SMITH, and VERNON R. SICKEL, Judges of said Court. The following proceedings were had and the following judgment was entered, to wit:

49 File No. 8711,

April Term A. D. 1946

IN THE SUPREME COURT,
State of South Dakota, ss:

Present: HERBERT B. RUDOLPH, Presiding Judge; E. D. ROBERTS, ST. CLAIR SMITH, and VERNON R. SICKEL, Judges of said Court, and the officers thereof:

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DEC., U. S. DEPARTMENT OF AGRICULTURE EMERGENCY CROP AND FEED LOANS, PLAINTIFF AND APPELLANT

vs.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, DEFENDANT AND RESPONDENT

This action coming on to be heard at the April A. D. 1945 Term of this Court at the Supreme Court Room in the City of Pierre, State of South Dakota, upon the merits of the case and upon argument by counsel and the Court having advised thereon and filed its decision in writing.

It is considered, ordered, and adjudged, that the order of the Circuit Court, within and for Roberts County, appealed from herein, be and the same is hereby affirmed.

And it is further ordered, that this action be and it is hereby remanded to said Circuit Court for further proceedings according to law and the decision of this Court.

And it is further ordered and adjudged, that respondent have and recover of the appellant costs and disbursements on this appeal, expended, taxed and allowed at Thirty-one and no/100 Dollars.

By the Court,

[SEAL] HERBERT B. RUDOLPH,
Presiding Judge.

Attest:

J. W. RAISH, *Clerk.*
By ——— ———, *Deputy Clerk.*

50 IN THE SUPREME COURT,
State of South Dakota, ss:

I, J. W. Raish, Clerk of the Supreme Court, within and for the State of South Dakota, do hereby certify that the above and foregoing is a full, true, correct and complete transcript and copy of the judgment of the Supreme Court of the State of South Dakota, in the above entitled action, wherein the U. S. Department of Agriculture Emergency Crop and Feed Loans is Plaintiff and Appellant versus George G. Remund, as Administrator of the Estate of Wilhelm Buttke, deceased, Defendant and Respondent, as the same now remains of record in said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 10th day of June A. D. 1946.

By J. W. RAISH, *Clerk.*
By ——— ———, *Deputy Clerk.*

51 [File endorsement omitted.]

52 In the Supreme Court of the United States
October Term, 1946

IN THE MATTER OF THE ESTATE OF WILHELM BUTTKE, DECEASED, U. S. DEPARTMENT OF AGRICULTURE EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED, RESPONDENT

Stipulation as to record

Filed Aug. 13, 1946

Subject to this Court's approval, it is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled case that;

1. The Respondent specifically reserves the right to move the dismissal of said writ of certiorari for the reason that the application for and the serving of the notice thereof were not made in proper time.

2. It is further stipulated and agreed that Respondent by this stipulation does not waive his right to move the dismissal of said writ of certiorari by reason of the failure of petitioner to exhaust its remedies in the Supreme Court of the State of South Dakota; particularly in that it did not move for a re-hearing upon the Judgment of the Supreme Court of the State of South Dakota.

3. It is specifically stipulated and agreed that Respondent does not by this stipulation waive any of his rights to move for dismissal of said writ of certiorari, and it is further stipulated
53 that this stipulation shall not extend to petitioner any rights or privileges which it does not now have, nor shall this stipulation bar respondent of any rights which it now has; that this stipulation shall extend to the following subjects only and except as to those subjects the position of the petitioner and respondent shall be and remain in all things the same as if this stipulation had not been entered into.

4. For the purpose of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record shall consist of the following:

	Pages of Transcript
a. Proof of Claim of United States Department of Agriculture	13-17
b. Notes upon which claim of United States Department of Agriculture was based	18-24

Pages of Transcript

c. Final Report, Petition for Settlement and Discharge of Administrator 59–63
d. Order of County Court approving Final Report, Final Decree and Discharge of Administrator 68–72
e. Notice of Appeal to Circuit Court 73–75
f. Order of Circuit Court Affirming Judgment of County Court 86–87
g. Notice of Appeal to Supreme Court.
h. Judgment of Supreme Court.
i. Remittitur.
j. Opinion of Supreme Court.

5. Any of the parties may refer in their briefs and arguments to any part of the original record now on file in this Court.

August 5, 1946.

J. Howard McGrath,
J. Howard McGrath,
Solicitor General.

August 8, 1946.

Frank R. McKenna,
Attorney for Respondent.

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

No. 417 —, October Term, 1946

Order allowing certiorari

Filed October 28, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of South Dakota is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

724993—46

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY

Office - Supreme Court, U. S.
FILED
AUG 19 1946
CHARLES ELMORE CROPLEY
CLERK

No. 417

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 417

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

The Solicitor General on behalf of the United States prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of South Dakota entered in the above-entitled case on May 20, 1946.

OPINION BELOW

The opinion of the Supreme Court of the State of South Dakota (R. 21–30) is reported at 23 N. W. 2d 281. The Circuit Court of the Fifth Judicial Circuit of South Dakota and the County Court of Roberts County, South Dakota, wrote no opinions.

JURISDICTION

The judgment of the Supreme Court of South Dakota was entered on May 20, 1946 (R. 30–31). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 15, 1925, on the ground that the decision denied a title, right, privilege, or immunity claimed by the United States under Section 3466 of the Revised Statutes. The cases relied upon to sustain the jurisdiction of this Court are *United States* v. *Knott,* 298 U. S. 544; *United States* v. *Emory,* 314 U. S. 423; and *United States* v. *Waddill Co.,* 323 U. S. 353.

The court below held that, in a probate proceeding in the County Court of Roberts County, South Dakota, priority of payment under R. S. 3466 was properly denied to a claim asserted by the Farm Credit Administration, on behalf of the United States, based upon Emergency Crop and Feed Loans made to the decedent pursuant to the Acts of February 23, 1934, and June 19, 1934.

The United States asserted its right under R. S. 3466 to priority in payment at the time it filed its claim with the respondent Administrator. Upon denial of the claimed preference by respondent, the claim for priority was successively urged upon and rejected by the County Court of Roberts County (R. 13), by the Circuit Court

for the Fifth Judicial Circuit (R. 19), and by the Supreme Court of the State of South Dakota (R. 21–30).

The question presented is one of substance (*United States* v. *Emory,* 314 U. S. 423; *United States* v. *Waddill Co.,* 323 U. S. 353), as is more fully developed under the reasons for granting the writ (*infra,* pp. 6–13).

QUESTION PRESENTED

Whether, in a state probate proceeding, a claim asserted by the Farm Credit Administration and certain of its officials for and on behalf of the United States is entitled to priority under Section 3466 of the Revised Statutes.

STATUTES INVOLVED

The relevant portions of the statutes involved are set forth in the Appendix, *infra,* pp. 14–18.

STATEMENT

The facts are undisputed, and may be summarized as follows: Pursuant to the Acts of February 23, 1934, and June 19, 1934 (Appendix, *infra,* pp. 14–17), the Governor of the Farm Credit Administration extended loans to Wilhelm Buttke totaling $370.00 (R. 5–8). Eighty dollars of this amount was evidenced by a 5½% interest-bearing note, payable on or before August 13, 1935, and bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration acting pursuant to the act

of Congress approved February 23, 1934" and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property" (R. 5). The remaining $290.00 loaned to Buttke was evidenced by six 5½% interest-bearing notes, payable on or before November 1, 1935, each note bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934," and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration" (R. 5–8). On December 26, 1941, Wilhelm Buttke died intestate, leaving an estate insufficient to pay all of his debts (R. 9). On March 2, 1942, there was filed in the County Court of Roberts County, South Dakota, a claim against Buttke's estate for $523.80, by "John T. Ashford, Manager, Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska, an authorized agent for the Governor, Farm Credit Administration, for and on behalf of the United States of America" (R. 3–4). Accompanying the claim was a mimeographed "memorandum" from the Farm Credit Administration, Emergency Crop and Feed Loan Office, Omaha, Nebraska, asserting priority on behalf of the United States

under R. S. 3466 (R. 1–2).[1] On October 31, 1942, the County Court, in its "Order approving final report, final decree and discharge of administrator," denied preference to the claim, but allowed it in the sum of $79.53 as the pro rata share of a claim of a common creditor (R. 12–16). On appeal, under the caption "U. S. Department of Agriculture, Emergency Crop and Feed Loans," the decision of the County Court was affirmed by the Circuit Court of the Fifth Judicial Circuit of South Dakota, and by the Supreme Court of South Dakota (R. 18–19, 21–30).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of South Dakota erred:

1. In holding in substance that a claim filed in the name of the Farm Credit Administration or its officers "for and on behalf of the United States" is not a claim filed by the United States.

2. In holding that the Farm Credit Administration is an entity separate and distinct from the United States, having independent power to sue.

3. In holding that claims of the Farm Credit Administration based upon loans made under the Acts of February 23, 1934, and June 19, 1934, are

[1] The memorandum was addressed to "All Receivers, Referees, Executors, Administrators, Assignees, and Courts Dealing with Insolvent, Bankrupt, or Deceased Borrowers of the Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska."

not "debts due to the United States" within the meaning of R. S. 3466.

4. In holding that claims of Farm Credit Administration based upon loans under the Acts of February 23, 1934 and June 19, 1934 are not entitled to priority under R. S. 3466.

5. In denying priority to claims of the United States.

6. In affirming the judgment of the Circuit Court of the Fifth Judicial Circuit of South Dakota.

REASONS FOR GRANTING THE WRIT

R. S. 3466 provides that "whenever the estate of any deceased debtor * * * is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied * * *" (Appendix, *infra*, p. 14). The court below, intimating that the claim here involved was not a "debt due to the United States," because asserted in the name of the Farm Credit Administration, denied preference to the claim upon the independent ground that the statutes under which the claim originated had carved out exceptions to R. S. 3466.[2] This ruling upon an important question of federal law is, we submit, clearly erroneous and in conflict with the applicable decisions of this Court as to the scope of R. S. 3466.

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[2] While the court only discussed the Act of February 23, 1934, its decision applies to the Act of June 19, 1934, as well.

1. The claim here involved was plainly for "a debt due to the United States." *United States* v. *Thomas*, 107 F. 2d 765 (C. C. A. 5); *Person* v. *United States*, 112 F. 2d 1 (C. C. A. 8), certiorari denied, 311 U. S. 672; *In re Wilson*, 23 F. Supp. 236 (N. D. Tex.); *United States* v. *Fontenot*, 33 F. Supp. 629 (W. D. La); *Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838 (Tex. Civ. App.); cf. *Wagner* v. *McDonald*, 96 F. 2d 273 (C. C. A. 8); *In re Hansen Bakeries, Inc.*, 103 F. 2d 665 (C. C. A. 3); *United States* v. *Dobbins*, 139 F. 2d 169 (C. C. A. 5). And, although filed by the Farm Credit Administration, the claim was a claim asserted by the United States.[3] The claim itself specifically stated that it was a "claim of the United States of America," and that the Farm Credit Administration was acting "for and on behalf of the United States"; the notes appended to the claim all recited their origin in loans made under federal statutes; and the "memorandum" attached to the claim asserted preference under Rev. Stat. 3466 for "debts due to the United States." In these circumstances, the claim was clearly a claim of, and made by, the United States.[4] *Wagner* v. *McDonald*, 96 F. 2d 273 (C.

[3] While the court below did not expressly deny that the claim was a claim asserted by the United States, the opinion states that the claim could be treated as such "only by inference, explanation and argument" (R. 23).

[4] The circumstances that the appeal in the circuit court was captioned "United States Department of Agriculture, Emergency Crop and Feed Loans," instead of "United States," is

C. A. 8); *In re Dickson's Estate*, 197 Wash. 145; *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743 (App. D. C.) (*semble*); cf. *E. I. duPont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 459; *Inland Waterways* v. *Young*, 309 U. S. 517; *Cherry Cotton Mills* v. *United States*, No. 187, Oct. T. 1945, decided March 25, 1946.

immaterial here. The case was handled by the United States Attorney's Office at all times, and was conducted in the same manner as any other suit of the United States. Cf. *National Home for Disabled Volunteer Soldiers* v. *Wood*, 81 F. 2d 963, 965 (C. C. A. 7), affirmed, 299 U. S. 211. The variation in caption could in no way prejudice respondent. Cf. *E. I. duPont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 459. In any event, any question of the right of the United States to sue in the name of the "Department of Agriculture" is no longer open to challenge, for it is well settled that after issue is joined it is too late to raise such a question. *Fortier* v. *New Orleans Nat. Bank*, 112 U. S. 439; *McCandless* v. *Furlaud*, 293 U. S. 67, 73; *National Home for Disabled Volunteer Soldiers* v. *Wood*, *supra*; *W. H. Shenners Co.* v. *Lake Worth Realty & Building Co.*, 45 F. 2d 297 (C. C. A. 7), certiorari denied, 283 U. S. 833; *Alderman* v. *New York Underwriters Insurance Co.*, 61 S. D. 284, 299; *State ex rel. Cook* v. *Board of Commissioners*, 29 S. D. 358.

[5] In *Federal Housing Administrator* v. *Moore*, 90 F. 2d 32 (C. C. A. 9), mentioned by the court below (R. 29), priority in bankruptcy was denied a claim of the Federal Housing Administrator, partly on the ground that the claim was not filed in the name of the United States. But, it does not appear that the claim there was filed, as here, on behalf of the United States, or that the debt upon which the claim was based was acquired by the Administrator acting for the United States. Moreover, the decision of the court turned primarily upon the fact that the debt was assigned to the Administrator after the date of adjudication. See *Wagner* v. *McDonald*, *supra*, 96 F. 2d at 276; *In re Dickson's Estate*, 197 Wash. at 153; *United States* v. *Marxen*, 307 U. S. 200.

2. In denying priority to this claim, the court below disobeyed "the plain command of § 3466 that 'debts due to the United States shall be first satisfied' " (*United States* v. *Emory*, 314 U. S. 423, 426). Notwithstanding the repeated admonition of this Court that "only the plainest inconsistency would warrant * * * finding an implied exception to the operation of so clear a command" (*United States* v. *Emory, supra*, at 433; *Illinois ex rel. Gordon* v. *United States*, No. 749, 1945 Term, decided April 22, 1946), the court below, without reliance upon any particular language in the Act of February 23, 1934, and without referring to any of its legislative history, held that the Act gave rise to an implied exception to R. S. 3466. The court relied, in part, upon *Sloan Shipyards Corp.* v. *Fleet Corporation*, 258 U. S. 549, which denied priority to a claim of the Fleet Corporation (R. 25–26). But the *Sloan* case clearly has no application here, for it is only pertinent to claims asserted by a corporate agency of the United States (see *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743, 746 (App. D. C.)); the Farm Credit Administration, here involved, "is merely an administrative unit of government" (*United States* v. *Fontenot*, 33 F. Supp. 629 (W. D. La.); *Korman* v. *Federal Housing Administrator, supra*, 113 F. 2d at 746), without corporate personality, and without authority to sue as an independent entity (*North Dakota-Montana Wheat Growers Ass'n* v. *United States*, 66

F. 2d 573 (C. C. A. 8); *Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838 (Tex. Civ. App.)).[6]

The court below also relied upon *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, which denied priority to a claim based upon a loan to a railroad under Title II of the Transporation Act, 1920 (41 Stat. 456, 457–469, 49 U. S. C. 71 *et seq.*) (R. 27). That Act, designed to promote the stability of the railroads for the national benefit, provided that the Government should, to a certain extent, finance the carriers until their credit was restored; and this Court, believing that priority under R. S. 3466 for such loans would impair rather than improve the credit of the railroads, held that to apply R. S. 3466 would have "defeated the purpose of Congress" (280 U. S. at 484–485). The court below sought to assimilate the instant case to the *Guaranty Trust* case, suggesting that "knowledge of priority of Government claims certainly would have been a handicap to a farmer in using his credit with local bankers and investors" (R. 28).

[6] The court below also intimated that the lending activities of the United States are commercial rather than governmental in character (R. 23–25). But all valid acts of the United States are necessarily governmental and sovereign in character. *Graves* v. *O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32. A contrary holding in respect of a Federal Housing Administration loan by the Supreme Court of Florida was summarily rejected by this Court in *United States* v. *Summerlin*, 310 U. S. 414, 416, reversing s. c. 140 Fla. 475.

However, this misconceives the underlying purpose of the statutes under which the loans here involved were made. They were granted to the farmer so that he might plant a new crop or preserve his starving livestock; the amount of the loan was impressed with a trust to accomplish that purpose; and the loans were made only when he could not borrow elsewhere (Appendix, *infra*, p. 16; see *United States* v. *Thomas*, 107 F. 2d 765, 766 (C. C. A. 5)). Thus, the loans were hardly intended as a device for maintaining credit, and the court below, in concluding that the *Guaranty Trust* decision was "controlling in this case," was clearly in error (R. 28).

The *Guaranty Trust* case, we believe, represents simply an isolated exception carved out of R. S. 3466 because of the unique character of the lending statute there involved. Certainly since the time of that case, the decisions in *United States* v. *Knott*, 298 U. S. 544; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Waddill Co.*, 323 U. S. 353; and *Illinois ex rel. Gordon* v. *United States*, *supra*, decided April 22, 1946, which dealt with other situations, have charted a wholly different course. Thus, in the *Knott* case the United States was given priority for debts due on estreated bail bonds; in the *Emory* case, priority was granted to a Federal Housing Administration claim based upon a loan insured under the Federal Housing Act; in the *Waddill*

case, a claim of the United States was given priority over a landlord's lien and a municipal tax lien; and in the *Gordon* case, a claim of the United States for unemployment compensation taxes was accorded priority over the state's claim for unemployment compensation taxes. We believe that these later decisions, and particularly the *Emory* case, disclose that R. S. 3466 is to be applied in its full vigor, and that, before an exception thereto will be implied, the language or the legislative history of a given Act must affirmatively and plainly show that the priority of the United States was to be waived. Since no such affirmative showing can be made here, the decision of the court below was clearly erroneous.

3. The question presented in this case is one of substantial importance meriting review by this Court. If the decision below is allowed to stand, it will undoubtedly encourage other state courts to take a hostile view towards R. S. 3466, and to disregard its "plain command," both with respect to claims arising under Farm Credit Administration statutes and claims arising under other federal statutes. See *United States* v. *Knott, supra; United States* v. *Emory, supra; United States* v. *Texas,* 314 U. S. 480; *United States* v. *Waddill Co., supra.* The Secretary of Agriculture advises that claims of the character here involved, based upon "loans made by the Farm Credit Administration" and "similar claims for loans made by

the Farm Security Administration, arise constantly and in the course of time there will be hundreds of such claims aggregating a large amount of money." The United States Attorney for the District of South Dakota advises that, as a consequence of the decision below, the courts of South Dakota are refusing to recognize claims based upon loans of the Farm Credit Administration as debts due the United States, and are applying state statutes of limitations to bar prosecution of such claims.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. HOWARD MCGRATH,
Solicitor General.

AUGUST 1946.

APPENDIX

1. R. S. 3466, 31 U. S. C. 191, provides as follows:

> *Priority established.*—Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

2. The Act of February 23, 1934, c. 23, 48 Stat. 354, provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Governor of the Farm Credit Administration, hereinafter in this Act referred to as the 'Governor', is hereby authorized to make loans to farmers during the year 1934 for crop production, planting, fallowing, and cultivation and, to the extent of not exceeding $1,000,000, for feed for livestock in drought- and storm-stricken areas.
>
> SEC. 2 (a) A first lien on all crops growing or to be planted or grown or harvested

during the year 1934, or on livestock, shall be required as security for any such loan: *Provided, however,* That in the case of a loan for the purpose of summer fallowing or the production of winter wheat, a first lien, or an agreement to give a first lien, on crops to be harvested in 1935 may, in the discretion of the Governor, be deemed sufficient security. Except as hereinafter provided, such loans shall be made through such agencies, upon such terms and conditions, and subject to such regulations as the Governor shall prescribe. Recording and other fees in connection with such loans shall not exceed $1 in any case, which shall be paid by the Farm Credit Administration. Loans made pursuant to the provisions of this Act shall bear interest at the rate of not to exceed 5½ per centum per annum. For the purpose of collecting loans made under this Act and under prior Acts of the same general character, the Governor may use the facilities and services of the Farm Credit Administration or of any officer or officers thereof and may pay for such services and the use of such facilities from the funds made available under section 5 hereof for the payment of necessary administrative expenses; and such institutions are hereby expressly empowered to enter into agreements with the Governor for such purposes.

(b) The amount which may be loaned to any borrower pursuant to this Act shall not exceed $250 unless, in the opinion of the Governor, the circumstances surrounding the loan are such as to warrant a larger amount, in which event the borrower shall be entitled to a loan not in excess of $400; *Provided, however,* That in

any area certified by the President of the United States to the Governor as a distressed emergency area, the Governor may make loans without regard to the foregoing limitations, under such regulations and for such time as he may prescribe therefor.

(c) No loan shall be made under this Act to any applicant who shall not have first established to the satisfaction of the proper officer or employee of the Farm Credit Administration, under such regulations as the Governor may prescribe (1) that such applicant is unable to procure from other sources a loan in an amount reasonably adequate to meet his needs for the purposes for which loans may be made under this Act; and (2) that such applicant is cooperating directly in the crop production control program of the Agricultural Adjustment Administration or is not proposing to increase his 1934 production of basic agricultural commodities in a manner detrimental to the success of such program.

Sec. 3 (a) The moneys authorized to be loaned by the Governor under this Act are declared to be impressed with a trust to accomplish the purposes provided for by this Act, namely, the production, planting, fallowing, cultivation of crops, and feed for farm livestock, which trust shall continue until the moneys loaned pursuant to this Act have been used for the purposes contemplated by this Act, and it shall be unlawful for any person to make any material false representation for the purpose of obtaining any loan or to assist in obtaining such loan or to dispose of or assist in disposing of any crops given as security for any loan made under authority of this Act,

except for the account of the Governor, and for the purpose of carrying out the provisions of this Act.

* * * * *

3. The Act of June 19, 1934, c. 648, 48 Stat. 1021, 1056, provides as follows:

* * * * *

To meet the emergency and necessity for relief in stricken agricultural areas, to remain available until June 30, 1935, $525,000,000, to be allocated by the President to supplement the appropriations heretofore made for emergency purposes and in addition thereto for (1) making loans to farmers for, and/or (2) the purchase, sale, gift, or other disposition of, seed, feed, freight, summer fallowing and similar purposes; expenditures hereunder and the manner in which they shall be incurred, allowed, and paid, shall be determined by the President, and may include expenditures for personal services and rent in the District of Columbia and elsewhere and for printing and binding and may be made without regard to the provisions of section 3709 of the Revised Statutes.

* * * * *

4. Section 35.1422, South Dakota Code (1939) provides as follows:

Order of Payment of Claims. All demands against the estate of any deceased person must be paid in the following order:

(1) The expenses of administration;

(2) Funeral expenses, including reasonable cost of burial lot, and not to exceed fifty dollars for marker on grave;

(3) The expenses of last sickness;

(4) Any debt that may be due by decedent personally to servants and employees for services rendered within the sixty days next preceding his death;

(5) Debts having preference by the laws of the United States;

(6) All other demands against the estate, except that where a lien for any demand exists by mortgage, pledge, attachments, judgments, or execution levy, such lien shall have preference according to its priority to the extent of such demand, on any specific property on which such lien shall have attached."

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No. 417

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

BRIEF FOR THE PETITIONER

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No. 417

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of the State of South Dakota (R. 21–30) is reported at 23 N. W. 2d 281. The Circuit Court of the Fifth Judicial Circuit of South Dakota and the County Court of Roberts County, South Dakota, wrote no opinions.

JURISDICTION

The judgment of the Supreme Court of South Dakota was entered on May 20, 1946 (R. 30–31).

The petition for writ of certiorari was filed on August 19, 1946, and granted on October 28, 1946 (R. 35). The jurisdiction of this Court rests upon Section 237 (b) of the Judicial Code, as amended by the Act of February 15, 1925.

QUESTION PRESENTED

Whether, in a state probate proceeding, a claim asserted by the Farm Credit Administration and certain of its officials for and on behalf of the United States is entitled to priority under Section 3466 of the Revised Statutes.

STATUTES INVOLVED

The relevant portions of the statutes involved are set forth in the Appendix, pp. 31–35.

STATEMENT

Section 3466 of the Revised Statutes (Appendix, p. 31), in so far as here relevant, provides that "* * * whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied * * *."

The facts are undisputed and may be summarized as follows:

Pursuant to the Acts of February 23, 1934, and June 19, 1934 (Appendix, pp. 31–34), the Governor of the Farm Credit Administration extended loans to Wilhelm Buttke totalling $370.00 (R.

5–8).[1] The major portion of these loans remained unpaid, and on December 26, 1941, Buttke died intestate, leaving an estate insufficient to pay all of his debts (R. 9). On March 2, 1942, the Governor of the Farm Credit Administration filed in the County Court of Roberts County, South Dakota, a claim against Buttke's estate for $523.80, the amount of the unpaid indebtedness including interest. This claim was made "for and on behalf of the United States of America" (R. 1–4), and a priority therefor on behalf of the United States was asserted under R. S. 3466 (R. 1–2).[2]

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[1] Eighty dollars of this amount was evidenced by a 5½% interest-bearing note, payable on or before August 13, 1935, and bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration acting pursuant to the act of Congress approved February 23, 1934"; and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property" (R. 5). The remaining $290.00 loaned to Buttke was evidenced by six 5½% interest-bearing notes, payable on or before November 1, 1935, each note bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934," and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration" (R. 5–8).

[2] The claim was filed by "John T. Ashford, Manager, Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska, an authorized agent for the Governor, Farm Credit Administration, for and on behalf of the United States of America" (R. 1–4). Accompanying the claim was a mimeographed memorandum

On October 31, 1942, the County Court denied preference to the claim, but allowed it in the sum of $79.53, representing the pro rata share of a claim of a common creditor (R. 12–16). On appeal, this decision was affirmed by the Circuit Court of the Fifth Judicial Circuit of South Dakota (R. 18–19) and by the Supreme Court of South Dakota (R. 21–30). The Supreme Court, while not specifically deciding whether the claim in question was or was not a claim of the United States, stated that since the claim was not filed in the name of the United States, it could be treated as a claim of the United States "only by inference, explanation and argument" (R. 23). It then held, relying on *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, which it regarded as controlling, that an exception to R. S. 3466 was created by the Acts of February 23, 1934, and June 19, 1934, and accordingly refused to allow the claimed priority.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of South Dakota erred:

1. In holding in substance that a claim filed in the name of the Farm Credit Administration or

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from the Farm Credit Administration, Emergency Crop and Feed Loan Office, Omaha, Nebraska, asserting priority on behalf of the United States under R. S. 3466; this memorandum was addressed to "All Receivers, Referees, Executors, Administrators, Assignees, and Courts Dealing with Insolvent, Bankrupt, or Deceased Borrowers of the Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska" (R. 1–2).

its officers "for and on behalf of the United States" is not a claim filed by the United States.

2. In holding that the Farm Credit Administration is an entity separate and distinct from the United States, having independent power to sue.

3. In holding that claims of the Farm Credit Administration based upon loans made under the Acts of February 23, 1934, and June 19, 1934, are not "debts due to the United States" within the meaning of R. S. 3466.

4. In holding that claims of the Farm Credit Administration based upon loans under the Acts of February 23, 1934, and June 19, 1934, are not entitled to priority under R. S. 3466.

5. In denying priority to claims of the United States.

6. In affirming the judgment of the Circuit Court of the Fifth Judicial Circuit of South Dakota.

SUMMARY OF ARGUMENT

I

The claim here involved, filed in the name of the Governor of the Farm Credit Administration for and on behalf of the United States on loans made pursuant to the Act of February 23, 1934 and June 19, 1934, is for a debt due to the United States. As its evolution clearly demonstrates, the Farm Credit Administration (unlike the government corporation involved in *Sloan Shipyards Corp.* v. *United States Fleet Corp.*, 258 U. S. 549) has no identity separate from the Government, and is

merely an administrative unit similar to any regular department or other noncorporate establishment of the United States. Moreover, since the monies which the Farm Credit Administration used to make loans to farmers pursuant to these Acts were appropriated by Congress out of the United States Treasury, and when collected are repaid into the Treasury, these monies are those of the United States and the debts are due it. The fact that these activities were conducted by an agent of the United States under a name other than the United States is immaterial.

Nothing either in R. S. 3466 or in the long line of cases involving that statute supports the requirement impliedly imposed by the court below that the claim must be filed in the name of the United States. The sole condition of the priority established in the statute—that the debt be due to the United States—is here satisfied. Although the claim was filed in the name of the Governor, Farm Credit Administration, he was at most only a nominal claimant and an agent of the Government, asserting the claim on behalf of the United States. In any case, respondent was not prejudiced by the fact that the claim was filed in the name of the Governor, which variation is only a formal matter and, since not raised below, is no longer open to challenge.

II

The decision of the court below should be examined in light of the settled law that R. S.

3466 is to be liberally construed, and that exceptions to its clear language are not to be found in the absence of express statutory language or of the plainest inconsistency with the avowed purpose of the particular statute. Relying on *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, the court below found an inconsistency between the purposes of the Acts here involved and R. S. 3466, in that the Government's priority might handicap the farmer in securing credit with the local bankers and investors. Such inconsistency does not in fact exist here. It is clear both from the express language of the Acts here involved and their legislative history that these statutes were intended simply to lend aid and assistance to farmers who were suffering from repeated crop failures and adverse economic conditions and who had no money and no means of obtaining credit in order to keep their farms in operation. These statutes were only two of various similar statutes passed during the depression period to provide relief for farmers. Although the creation of Production Credit Associations by the Farm Credit Act of 1933 made credit available to farmers who were more or less sound financial risks, emergency feed and crop loans secured generally by only first liens on crops growing or to be grown were continued for farmers who could not qualify for loans from these Associations, thereby emphasizing the emergency relief nature of these loans.

Moreover, even if the purpose of these Acts had been to restore the farmers' credit, the *Guaranty Trust* case is nevertheless not controlling. Under the more recent decisions of this Court such purpose would appear not to be so plainly inconsistent with R. S. 3466 as to warrant the implication that Congress had intended to relinquish the priority. This Court expressly so held in *United States* v. *Emory*, 314 U. S. 423. In addition, the *Emory* case, together with *United States* v. *Waddill Co.*, 323 U. S. 353, and *Illinois ex rel. Gordon* v. *United States*, No. 749, October Term, 1945, decided April 22, 1946, makes it clear that the *Guaranty Trust* case is simply an isolated exception carved out of R. S. 3466 because of the unique character of its lending statute. These recent decisions demonstrate that R. S. 3466 is to be applied in its full vigor, and that before an exception will be implied, the language or legislative history of the pertinent Act must affirmatively and plainly show that the priority of the United States was intended to be waived. No such showing has been, or can be, made here.

Finally, the Farm Credit Administration and the Department of Agriculture have consistently asserted successfully that these claims are entitled to priority; and the Department of Justice in litigation has likewise taken that position in connection with loans referred to it for collection. It also appears that Congress was aware of this uniform practice, and although it has enacted leg-

islation permitting the Secretary of Agriculture to compromise such debts, it has not waived priority. Such long-continued practice, acquiesced in by Congress, should prevail.

ARGUMENT

I

A CLAIM FILED IN THE NAME OF THE GOVERNOR OF THE FARM CREDIT ADMINISTRATION FOR AND ON BEHALF OF THE UNITED STATES ON LOANS MADE PURSUANT TO ACTS OF FEBRUARY 23, 1934, AND JUNE 19, 1934, IS FOR A DEBT DUE TO THE UNITED STATES

The Supreme Court of South Dakota, in denying priority to the claim here involved, did not explicitly hold that it was not a debt "due to the United States." The court's statement that this claim can be treated "as a claim filed by the United States only by inference, explanation and argument" (R. 23) does not necessarily deny that the debt is one due the United States, but

[3] The court also took judicial notice of the fact "that many claims of this character have actually been sued in the courts, exemplifying that the plaintiff at least would interpret the act as giving authority for the plaintiff to sue" (R. 24). Although the caption in the court below was the same as it is here, we presume that the court below was referring either to the Farm Credit Administration or to its Governor, and not to the Department of Agriculture. The court below also discussed, as if applicable, the *Sloan Shipyards* case (R. 25–26) and *Federal Housing Administrator v. Moore*, 90 F. 2d 32 (C. C. A. 9) (R. 29–30), which cases have no significance here except in relation to the question of whether the claim here asserted was a debt due the United States.

may merely be an attempt to tack to the assertion of priority under R. S. 3466 a wholly unwarranted formal requirement. Respondent, however, squarely contends that the claim here involved is not a debt to the United States. Neither the statutes involved nor the controlling decisions lend any support to the Court's intimations and respondent's ~~and respondent's~~ contentions in this respect.

A. THE CLAIM HERE INVOLVED IS A DEBT DUE TO THE UNITED STATES

Respondent argues (Br. in Opp., pp. 4–5) that since the claim here involved is based on seven notes executed by the deceased to "the Governor of the Farm Credit Administration, or order, at Washington, D. C." (R. 5, 6), and that since the notes stated that they were "given as evidence of a loan made by the Governor of the Farm Credit Administration," they are obligations due to the Governor of the Farm Credit Administration and not to the United States.[*] The premise of this argument is that the Farm Credit Administration, like the government corporation in *Sloan Shipyards Corp.* v. *United States Fleet Corp.*, 258 U. S. 549, is an entity, separate and distinct from the United States, and hence obligations due it are not entitled to priority under R. S. 3466.

[*] We do not understand respondent to contend, nor could such a contention reasonably be made, that the "Governor" is an entity distinct from the Farm Credit Administration.

The *Sloan Shipyards* case, whatever its present vitality, is restricted to the situation where the preference is in fact being claimed for a debt due, not to the United States or any department or agency thereof, but to a government corporation constituting a distinct legal entity and having an identity separate from that of the United States. *United States* v. *Marxen*, 307 U. S. 200, 203, 206; *In re Wilson*, 23 F. Supp. 236, 238 (N. D. Texas). Nothing is shown by respondent, or by the court below, which indicates that the Farm Credit Administration is in any material respect different from a regular department or other noncorporate establishment of the United States. *North Dakota-Montana Wheat Growers' Ass'n.* v. *United States*, 66 F. 2d 573 (C. C. A. 8); *In re Wilson, supra; Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838 (Tex. Civ. App.).

That the Farm Credit Administration "is merely an administrative body of the * * * Government" (*United States* v. *Fontenot*, 33 F. Supp. 629, 630 (W. D. La.); cf. *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743 (App. D. C.)) is clear. It was created originally in 1933 as an independent agency to take over the functions of the Federal Farm Board[5] and the Federal Farm Loan Board. Executive Order No. 6084. In 1939, it was subordinated to the Depart-

[5] See *Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838, 840–841 (Tex. Civ. App.), for a history of the Federal Farm Board.

ment of Agriculture to be administered in that department under the general supervision and direction of the Secretary of Agriculture (Reorganization Plan No. 1, Sec. 401 (a), 53 Stat. 1429, 4 Fed. Reg. 2730), and in 1942, as the consequence of consolidation within the Department of Agriculture, the Farm Credit Administration was made a part of the Food Production Administration. Executive Order No. 9280, 7 Fed. Reg. 10179. Plainly, then, the Farm Credit Administration is an unincorporated agency of the Government presently operating within the Department of Agriculture, established to carry out functions delegated to it for administration, has no identity separate from the Government, and its contracts and undertakings are those of the United States. *Herren* v. *Farm Security Administration,* 153 F. 2d 76 (C. C. A. 8); *North Dakota-Montana Wheat Growers' Ass'n.* v. *United States,* 66 F. 2d 573 (C. C. A. 8); *United States* v. *Fontenot, supra; In re Wilson,* 23 F. Supp. 236 (N. D. Texas); *Federal Reserve Bank of Dallas* v. *Smylie,* 134 S. W. 2d 838 (Tex. Civ. App.); cf. *Korman* v. *Federal Housing Administrator, supra.*

Moreover, the Farm Credit Administration "has no legal entity but exists as an agency of the United States Government to administer and disburse the funds appropriated by Congress out of the United States Treasury. Money thus distributed or loaned to farmers, when repaid by, or collected

from, them necessarily is paid back into the Treasury of the United States from whence it was taken." *Federal Reserve Bank of Dallas* v. *Smylie,* 134 S. W. 2d 838, 841 (Tex. Civ. App.). In other words, "the Governor of the Farm Credit Administration was merely an agent, or, intermediary through which the money passed from the treasury to the citizen. That those agents were given names other than the United States does not alter the fact that actually and in truth it was the money of the United States in each instance, and the debts are due the United States." *In re Wilson, supra,* at 238; cf. *Herren* v. *Farm Security Administration, supra,* pp. 77–78; *In re Hansen Bakeries, Inc.,* 103 F. 2d 665, 666 (C. C. A. 3). The fact that the monies which have been loaned and which are the basis for the claim for repayment and preference have been appropriated by Congress out of the Treasury of the United States for the purpose of such loans has frequently been regarded as controlling. *Wagner* v. *McDonald,* 96 F. 2d 273 (C. C. A. 8); *Barnett* v. *American Surety Co.,* 77 F. 2d 225 (C. C. A. 10); *In re T. N. Wilson, Inc.;* 24 F. Supp. 651 (E. D. N. Y.); *In re Weil,* 39 F. Supp. 618 (M. D. Pa.); *In re Stamford Auto Supply Co.,* 25 F. Supp. 530, 531 (N. D. Tex.); cf. *United States* v. *Summerlin,* 310 U. S. 414; *United States* v. *Brock,* 5 F. 2d 265 (W. D. La.). And it may be observed that the authority of the *Sloan Shipyards* case

seems to have been seriously impaired by subsequent decisions of the Court which have recognized the identity between the claims of governmental corporations and claims of the United States.[a] Cf. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524; *Cherry Cotton Mills* v. *United States*, 327 U. S. 536, 539. Accordingly, we sub-

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[a] As pointed out by the court below (R. 26–27), Mr. Chief Justice Taft concurred in the *Sloan Shipyards* case on the ground that he would limit the preference established by R. S. 3466 to claims of the United States for taxes. Respondent (Br. in Opp., pp. 3–5) has similarly suggested that R. S. 3466 is properly limited to the collection of taxes "imposed by the Federal Government in support of its sovereignty" in contradistinction to claims, such as those involved in the present case, arising from some business venture. But this attempted limitation on the scope of R. S. 3466 has not found acceptance. See *United States* v. *Knott*, 298 U. S. 544; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Waddill Co.*, 323 U. S. 353. Even assuming that the claim here involved had certain elements of a commercial nature and did not square exactly with the classic concept of governmental undertakings, it nevertheless was solely governmental in character. All valid acts of the United States are necessarily governmental and sovereign in character. *Graves* v. *O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32. A contrary holding in respect of a Federal Housing Administration loan by the Supreme Court of Florida was summarily rejected by this Court in *United States* v. *Summerlin*, 310 U. S. 414, 416, reversing 140 Fla. 475. In addition, it is well established that the preference established by R. S. 3466 does not arise from the sovereign character of the United States but from the statute itself. *United States* v. *State Bank of North Carolina*, 6 Pet. 29; *Whan* v. *Green Star SS Corp.*, 22 F. 2d 483 (C. C. A. 2), certiorari denied *sub nom. Adams* v. *United States*, 276 U. S. 629.

mit that the claim here involved constitutes a debt due to the United States.

B. THE MANNER IN WHICH THE CLAIM WAS FILED SATISFIES THE REQUIREMENT OF THE STATUTE

Since the claim was filed in the name of the Governor of the Farm Credit Administration, the court below stated that "inference, explanation or argument" is needed to arrive at the conclusion that the claim was filed by the United States. In denying the claim priority, the court by implication imposed the additional requirement that the claim must be filed in the *name* of the United States. This is a refinement for which no support can be found.

1. Neither R. S. 3466 itself nor any of the long line of cases involving that statute supports such a requirement. As far as the statute is concerned, the sole condition of the priority there established is that the debt be due to the United States. There is no requirement that it be filed in the name of the United States nor does the statute bar from priority debts admittedly due to the United States but filed in the name of one of its noncorporate agencies. In addition, although the statute has been in force in substantially its present form since 1797 (1 Stat. 515; *Price* v. *United States*, 269 U. S. 492, 501), no other case arising thereunder has ever imposed such a requirement.[1]

[1] In *Federal Housing Administrator* v. *Moore*, 90 F. 2d 32 (C. C. A. 9), mentioned by the court below (R. 29), pri-

2. In any event, the claim itself specifically stated that it was a "claim of the United States of America" (R. 4) and that the Farm Credit Administration was acting "for and on behalf of the United States of America" and "as the agent of the United States in making and collecting loans to farmers throughout the United States" (R. 4); the memorandum attached to the claim (R. 1) asserted preference under R. S. 3466 for "debts due to the United States" and asserted that "the United States Government, acting through the Secretary of Agriculture or through the Governor of the Farm Credit Administration, has made emergency crop and feed loans to farmers. Loans of this character are now administered by the Farm Credit Administra-

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ority in bankruptcy was denied a claim of the Federal Housing Administrator, partly on the ground that the claim was not filed in the name of the United States. But it does not appear that the claim there was filed, as here, on behalf of the United States, nor that the debt upon which the claim was based was acquired by the Administrator acting for the United States. Moreover, the decision of the court turned primarily upon the fact that the debt was assigned to the Administrator after the date of adjudication. See *United States* v. *Marxen*, 307 U. S. 200; *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743, 745–746 (App. D. C.); *Wagner* v. *McDonald*, 96 F. 2d 273, 276 (C. C. A. 8); *In re Dickson's Estate*, 197 Wash. 145, 153. Finally, the Circuit Court of Appeals for the Ninth Circuit itself expressly questioned the soundness of the *Moore* decision in the certificate (p. 4) filed in *United States* v. *Marxen*, No. 544, October Term, 1938.

tion * * *." Furthermore, the United States Attorney and his assistants appeared in their official capacities in the County Court of Roberts County (R. 13, 17, 18), the Circuit Court of Roberts County (R. 19, 20), and the Supreme Court of South Dakota (R. 21), to press the claim for priority. Cf. *National Home for Disabled Volunteer Soldiers* v. *Wood,* 81 F. 2d 963, 965 (C. C. A. 7), affirmed, 299 U. S. 211. In these circumstances, it was clear that the claim was being asserted by the United States in its name, and hence was entitled to priority under R. S. 3466. *Wagner* v. *McDonald,* 96 F. 2d 273 (C. C. A. 8); *In re Hansen Bakeries,* 103 F. 2d 665, 666 (C. C. A. 3); *Korman* v. *Federal Housing Administrator,* 113 F. 2d 743, 744 (App. D. C.); *In re T. N. Wilson, Inc.,* 24 F. Supp. 651 (E. D. N. Y.); *In re Stamford Auto Supply Co.,* 25 F. Supp. 530 (N. D. Texas); *In re Weil,* 39 F. Supp. 618 (W. D. Pa.); *In re Dickson's Estate,* 197 Wash. 145. Cf. *Herren* v. *Farm Security Administration,* 153 F. 2d 76 (C. C. A. 8).

Moreover, although the claim was filed in the name of the Governor of the Farm Credit Administration, he has no personal interest in the claim nor does he claim ownership of the debt in his own right; he is an agent of the United States, and his acts in so far as they are authorized are in legal effect the acts of the United States. Accordingly, he is at most only a nominal

claimant, and the court below should have looked through him to the real claimant and treated the claim as one made by the Government. *Wagner* v. *McDonald, supra,* at 276; *North Dakota-Montana Wheat Growers' Ass'n* v. *United States,* 66 F. 2d 573 (C. C. A. 8); *In re Wilson,* 23 F. Supp. 236 (N. D. Tex.); cf. *State Highway Commission of Wyoming* v. *Utah Const. Co.,* 278 U. S. 194; *E. I. Dupont de Nemours & Co.* v. *Davis,* 264 U. S. 456, 459; *Kansas* v. *United States,* 204 U. S. 331; *Herren* v. *Farm Security Administration, supra; National Home for Disabled Volunteer Soldiers* v. *Wood,* 81 F. 2d 963 (C. C. A. 7), affirmed, 299 U. S. 211; *United States* v. *Golden,* 34 F. 2d 367 (C. C. A. 10); *Schroeder* v. *Davis,* 32 F. 2d 454 (C. C. A. 8).

3. In any case, respondent was not prejudiced by the fact that the claim was filed in the name of the Governor, Farm Credit Administration, rather than in the name of the United States. Cf. *E. I. du Pont de Nemours & Co.* v. *Davis,* 264 U. S. 456, 459. Such variation is purely a formal matter which, since it has not been raised in the lower courts, is no longer open to challenge, for it is well settled under both federal and South Dakota law that after issue is joined, the raising of such a question is barred. *Fortier* v. *New Orleans National Bank,* 112 U. S. 439; *McCandless* v. *Furland,* 293 U. S. 67, 73; *National Home for Disabled Volunteer Soldiers* v. *Wood,* 81 F.

2d 963 (C. C. A. 7), affirmed, 299 U. S. 211; *W. H. Shenners Co.* v. *Lake Worth Realty & Building Co.*, 45 F. 2d 297 (C C. A. 7), certiorari denied, 283 U. S. 833; *Alderman* v. *N. Y. Underwriters' Insurance Co.*, 61 S. D. 284, 299, and cases there cited; *State ex rel. Cook* v. *Board of Commissioners*, 29 S. D. 358.

II

DEBTS DUE THE UNITED STATES ON LOANS MADE PURSUANT TO ACTS OF FEBRUARY 23, 1934, AND JUNE 19, 1934, ARE ENTITLED TO PRIORITY UNDER R. S. 3466

This Court has repeatedly and consistently held that R. S. 3466 is a statute enacted to secure adequate public revenues to sustain the public burden* and is to be liberally construed to effectuate its purpose. *United States* v. *Fisher*, 2 Cranch 358; *Harrison* v. *Sterry*, 5 Cranch 289, 298–299; *United States* v. *State Bank of North Carolina*, 6 Pet. 29, 35; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134; *Bramwell* v. *United States Fidelity and Guaranty Co.*, 269 U. S. 483, 487; *Price* v. *United States*, 269 U. S. 492, 500; *United States* v. *Marxen*, 307 U. S. 200, 206; *United States* v. *Emory*, 314 U. S. 423, 426. Moreover, the language of the statute,

* That the rule of liberal construction applies to all claims involving debts due the United States seems too clear to warrant discussion. See *United States* v. *Knott*, 298 U. S. 544; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Waddill Co.*, 323 U. S. 353; see also, *Inland Waterways* v. *Young*, 309 U. S. 517; *Cherry Cotton Mills* v. *United States*, 327 U. S. 536.

which admits of no exception, is so clear that there is but little room for construction. *Thelluson* v. *Smith,* 2 Wheat. 396; *Lewis, Trustee* v. *United States,* 92 U. S. 618, 621; *United States* v. *Emory,* 314 U. S. 423, 426; *United States* v. *Waddill Co.,* 323 U. S. 353, 355; *Illinois ex rel. Gordon* v. *United States,* No. 749, October Term, 1945, decided April 22, 1946. It is only in the presence of express language (*Mellon* v. *Michigan Trust Co.,* 271 U. S. 236) or of a basic inconsistency with the avowed purpose of a particular statute (*Cook County National Bank* v. *United States,* 107 U. S. 445; *United States* v. *Guaranty Trust Co.,* 280 U. S. 478) that this Court will conclusively presume a legislative intent to waive the priority conferred by R. S. 3466. It is in this setting, we submit, that the decision below should be examined.

Although the claim here involved is a debt due to the United States and there is no provision in the Acts of February 22 and June 19 expressly relinquishing the priority of the United States with respect to claims thereunder, the court below found an inconsistency between the purposes of these Acts and R. S. 3466 in that "knowledge of priority of Government claims certainly would have been a handicap to a farmer in using his credit with local bankers and investors" (R. 28). Because of this purported inconsistency the court below considered the present case to be "practically an exact parallel with" *United States*

v. *Guaranty Trust Co.*, 280 U. S. 478, and hence refused to apply R. S. 3466 to this debt (R. 28, 30).

The *Guaranty Trust* case involved loans made to railroads under Title II of the Transportation Act of 1920, 41 Stat. 456, 457–469. That Act was designed to promote the stability of the railroads for the national benefit by providing for government financing of the carriers to a certain extent until their credit was restored. Since the loans were for the purpose of stabilizing the railroads, this Court there refused to apply R. S. 3466 on the ground that priority in respect of such loans would impair, rather than improve, the credit of the railroads, and thus according these loans priority would defeat the purpose of the legislation (280 U. S. at 485).

We submit that the purpose of the Acts here involved was not to restore the credit of the farmers; that there is no such inconsistency here, as in the *Guaranty Trust* case, between the purposes of these Acts and R. S. 3466, as to require a denial of priority to debts arising thereunder; and, further, that even if there were such an inconsistency, the *Guaranty Trust* case is nevertheless not controlling.

A. THE PURPOSE OF THE ACTS OF FEBRUARY 23 AND JUNE 19 WAS NOT TO RESTORE THE CREDIT OF THE FARMERS, AND HENCE IS NOT INCONSISTENT WITH R. S. 3466

The finding of the court below that debts owed to the United States on loans made pursuant to

the Acts of February 23, 1934, and June 19, 1934, are not entitled to priority is based on the *Guaranty Trust* case, which it regarded as controlling. But the purpose of the statutes here involved, unlike the Transportation Act involved in the *Guaranty Trust* case, was not to restore the credit of the farmers, but rather to provide emergency relief to distressed farmers for the short period that they were unable elsewhere to obtain credit. This is obvious not only from the express language of these Acts, but from their legislative history as well.

The Acts of February 23, 1934, and of June 19, 1934, were only two in a series of emergency seed and crop loan statutes, the primary objective of which was to provide "for relief of farmers in the drought and/or storm stricken areas * * *" (46 Stat. 1032, 48 Stat. 354; cf. 45 Stat. 1365; 46 Stat. 78), and generally required as security only a first lien on all crops growing or to be grown.[9] Of these statutes, the first was passed in 1921 (41 Stat. 1347) and similar statutes were enacted during that depression. 42 Stat. 467; 43 Stat. 110; 44 Stat., Part II, 1245,

[9] In the *Guaranty Trust* case, this Court relied, as an additional ground for not applying R. S. 3466, on the fact that the Transportation Act provided other means of securing repayment of the Government's advances (280 U. S. at 485). That ground is inapposite here, since, in the light of the economic conditions then prevailing and the repeated crop failures, a first lien on crops growing or to be grown was clearly of dubious value.

1251. The large majority of statutes with accompanying appropriations were enacted from 1929 to 1935, during the depression period when farmers were suffering from repeated crop failures and adverse economic conditions. 45 Stat. 1306, as amended by 46 Stat. 3; 46 Stat. 78, as amended by 46 Stat. 254; 46 Stat. 1032, as amended by 46 Stat. 1160; 46 Stat. 1276; 47 Stat. 5; 47 Stat. 795; 48 Stat. 1056; 49 Stat. 28; see also 50 Stat. 5; 52 Stat. 27. The statutes passed early in this period did not require that the applicant be unable to secure credit elsewhere; in addition, they placed either no limit (46 Stat. 78; 46 Stat. 1032; 46 Stat. 1276; 47 Stat. 795), or a high ceiling on the maximum permissible loan (45 Stat. 1306, as amended by 46 Stat. 3). However, in 1933, the Farm Credit Act of that year, 48 Stat. 257, was enacted, establishing agencies for the extension of credit to those farmers who were more or less sound credit risks. Thereafter, a limit was placed on the amount of the loan [10] and it was re-

[10] Although under the Act of February 23, 1934, the loans were normally limited to $250, the Governor of the Farm Credit Administration was authorized to loan larger amounts up to $400 if in his opinion the circumstances so warranted; these limitations were inoperative in the case of loans to farmers in areas which the President certified as distressed emergency areas. Section 2 (b), Appendix, *infra*, pp. 32-33. Such loans would, of course, be a greater credit risk and therefore authorization to make such larger loans in those circumstances merely emphasizes that their basic purpose was to provide relief.

quired that the applicant must not be able to secure credit elsewhere, i. e., from the Production Credit Associations, organized pursuant to the Farm Credit Act. Section 2 (c) of the Act of February 23, 1934 (48 Stat. 354); Section 2 (c) of 49 Stat. 28; Section 2 (a) of 50 Stat. 5; H. Rep. No. 521, 73d Cong., 2d Sess., p. 1; S. Rep. No. 148, 73d Cong., 2d Sess., p. 1. The continuation of loaning facilities, after the creation of the Production Credit Associations, for farmers who were unable to obtain credit through such associations indicates clearly the emergency relief nature of the loans here involved.

During the consideration of the bills which subsequently became the Acts with which we are here particularly concerned, the emergency relief aspect of the loans was continually emphasized. The Senate Committee on Agriculture and Forestry pointed out in its report that a large percentage of farmers would not qualify for loans under the Farm Credit Act, which requires stock, a financial statement, and unpledged property sufficient to justify the loan, and that without these seed loans, millions of farmers and farm laborers will have to seek other employment which would necessarily add to the ranks of the distressed and unemployed, S. Rep. 148, 73d Cong., 2d Sess., p. 1.

In its Report (H. Rep. 521, 73d Cong., 2d Sess.), the House Committee on Agriculture re-

ported the bill favorably. In justifying that recommendation, the Committee said (p. 1):

> Your committee is well aware of the fact that the various production credit associations that are now being organized will serve a great purpose. These associations are to be permanent. It is not intended that crop production loans made directly by the Federal Government to the farmer shall be permanent but this bill is reported favorably by the committee at this time in the belief that it is necessary to taper off, so to speak, with loans of this character for the year 1934, until the production credit associations are well established and the farmers are in a position to avail themselves of the benefits provided by these associations.
>
> Under existing circumstances, these Federal crop loans will reach a class of crop producers who possibly would not be able at this time to procure loans from the production credit associations.

Both the Senate and House of Representatives were apparently in accord with these Committee Reports (78 Cong. Rec. 1825, 1953, 1955, 1956), the general purpose of which was summarized by Representative Kerr, who said (78 Cong. Rec. 1959):

> Let it be remembered that the Government is not seeking to make an investment; this is simply an endeavor to finance the

farmers of this country who are utterly unable to finance themselves."

Such a legislative history indicates that the legislation here involved "was solely an act of grace by the sovereign to meet a temporary emergency which had grasped certain citizens and left them temporarily in dire need of help." *Person* v. *United States*, 112 F. 2d 1, 2 (C. C. A. 8), certiorari denied, 311 U. S. 672. The purpose of the legislation was "to create an agency to make loans to distressed farmers. * * * The government was not seeking by this legislation to enter business and make money. It was simply trying to lend aid and assistance to farmers who had no credit and no money with which to purchase feed for their livestock and seeds for their crops." *United States* v. *Thomas*, 107 F. 2d 765, 766 (C. C. A. 5). Clearly then, the loans here involved were hardly intended as a device for maintaining credit, and the court below, in concluding that the *Guaranty Trust* case was "controlling in this case," was clearly in error (R. 28).

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[11] The House Committee on Appropriations in recommending the passage of H. J. Res. 571, entitled "Making appropriations available for administration of the Sugar Act of 1937 and for crop production and harvesting loans," enacted as 52 Stat. 27, pointed out: "Crop loans are needed to meet the requirement of that class of farmers whose cash needs are small, whose financial condition is such that they are unable to procure credit from any source, and who, but for the extension of credit by the Federal Government through the medium of crop production and harvesting loans, would require some other form of Government relief." H. Rep. No. 1707, 75th Cong., 3d Sess., pp. 3–4.

B. THE *GUARANTY TRUST* CASE IS NOT CONTROLLING

1. Assuming, contrary to the foregoing, that the purpose of the loans was, as found by the court below, to restore the credit of the farmers, we submit, nevertheless, that the *Guaranty Trust* case is not controlling, since under the more recent cases such purpose would appear not so inconsistent with R. S. 3466 as to warrant the implication that Congress had intended to relinquish the priority.

United States v. *Emory*, 314 U. S. 423, involved the applicability of R. S. 3466 to loans made pursuant to the National Housing Act. There, this Court expressly considered and rejected the contention that suppliers of goods and services would refuse to extend credit if in case of insolvency, they would be subordinated to the claims of the United States, and thus that the broad purposes of the National Housing Act would be thwarted if R. S. 3466 were applied, saying:

> In the first place, whatever may be the merits of the contention, it should be addressed to Congress and not to this Court. In the second place, the argument proves too much. If it is sound as applied to this kind of claim of the United States, it is equally sound as applied to all claims as to which the United States asserts priority under § 3466 (314 U. S. at 431).

Although the *Emory* case did not expressly overrule the *Guaranty Trust* case, it did limit

the application of the basic ground of decision in that case, saying: "Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of §3466. We think such inconsistency is wholly wanting here" (314 U. S. at 433). That this represents the considered view of this Court seems clear. In *United States* v. *Waddill Co.*, 323 U. S. 353, the applicability of R. S. 3466 to an F. H. A. loan was not questioned. In *Illinois ex rel. Gordon* v. *United States*, No. 749, October Term 1945, decided April 22, 1946, this Court unanimously reaffirmed the *Emory* doctrine. Accordingly, we submit that the applicability of the *Guaranty Trust* case has been so narrowed as to make it not controlling here.

Furthermore, because of the unique character of the lending statute involved in the *Guaranty Trust* case, we believe that that case is simply an isolated exception carved out of R. S. 3466. This view is supported by the subsequent decisions involving that statute which, although dealing with other situations, have charted a wholly different course. These later decisions, and particularly the *Emory* case, demonstrate that R. S. 3466 is to be applied in its full vigor, and that, before an exception thereto will be implied, the language and the legislative history of the pertinent Act must affirmatively and plainly show that the priority of the United States was intended to

be waived. No such showing can be made here, and the debt here involved is clearly entitled to priority.

2. The administrative interpretation of the Emergency Seed and Crop Loan Acts of February 23, 1934, and June 19, 1934, supports the view that the priority conferred by R. S. 3466 applies to loans made thereunder. The Government has consistently asserted priority under these Acts, both administratively through the Farm Credit Administration and the Department of Agriculture [12] and in litigation conducted by the Department of Justice when unpaid loans have been referred to it for collection. Owing to the large number of claims asserted and collected,[13] it is inconceivable that Congress was unaware of the uniform practice of insisting on priority in respect of the payment of these loans

[12] The form notification of the claim for priority, appearing at pages 1 and 2 of the record, of itself discloses a settled administrative interpretation by the Department of Agriculture and the Farm Credit Administration.

[13] According to the figures supplied by the regional Emergency Crop and Feed Loan Offices, these Offices have, since 1934, filed a total of 12,969 claims for priority in cases where the debtor is deceased. Of these claims, only 229 were initially denied, of which 171 were subsequently paid in full or part. Thus, recovery has been had on 12,911, or over 99% of the total number of claims, the total collections amounting to $3,850,808.48. Of the 58 claims which initially were denied, 28 are still pending and the other 30 have not been pursued because the time for taking an appeal had been allowed to lapse, because the estate was so insolvent as to indicate that no recovery could be had or because the amount involved was too insignificant to warrant the cost of an appeal. It is interesting to note that although the Omaha

where the debtor is deceased."[14] A long-continued practice of this character should prevail even were the soundness of such practice less clear. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524–525; *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 473.

CONCLUSION

It is respectfully submitted that the decision below should be reversed and the case remanded with instructions to allow the priority claimed by the United States.

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JANUARY 1947.

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regional office which serves South Dakota, the state of origin of the present case, has filed 2,212 claims, the present claim was the first in which the asserted priority has been denied; there are now pending in that region five additional cases awaiting the decision of this Court in the present case.

[14] Congressional awareness of the difficulties surrounding the collection of seed and crop loans is evidenced by the Act of December 20, 1944, 58 Stat. 836 (12 U.S.C., Supp. V, 1150), which authorizes the Secretary of Agriculture to compromise, adjust, or cancel these loans under specified conditions. This Act also authorizes the Secretary to cancel the indebtedness where "the debtor is deceased * * * and there is no reasonable prospect of obtaining collection," a situation which is not here present as collection may be effected in full in the instant case.

APPENDIX

1. R. S. 3466, 31 U. S. C. 191, provides as follows:

> *Priority established.*—Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

2. The Act of February 23, 1934, c. 23, 48 Stat. 354, provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Governor of the Farm Credit Administration, hereinafter in this Act referred to as the "Governor", is hereby authorized to make loans to farmers during the year 1934 for crop production, planting, fallowing, and cultivation and, to the extent of not exceeding $1,000,000, for feed for livestock in drought- and storm-stricken areas.
>
> SEC. 2 (a) A first lien on all crops growing or to be planted or grown or harvested

during the year 1934, or on livestock, shall be required as security for any such loan: *Provided, however,* That in the case of a loan for the propose of summer fallowing or the production of winter wheat, a first lien, or an agreement to give a first lien, on crops to be harvested in 1935 may, in the discretion of the Governor, be deemed sufficient security. Except as hereinafter provided, such loans shall be made through such agencies, upon such terms and conditions, and subject to such regulations as the Governor shall prescribe. Recording and other fees in connection with such loans shall not exceed $1 in any case, which shall be paid by the Farm Credit Administration. Loans made pursuant to the provisions of this Act shall bear interest at the rate of not to exceed 5½ per centum per annum. For the purpose of collecting loans made under this Act and under prior acts of the same general character, the Governor may use the facilities and services of the Farm Credit Administration or of any officer or officers thereof and may pay for such services and the use of such facilities from the funds made available under section 5 hereof for the payment of necessary administrative expenses; and such institutions are hereby expressly empowered to enter into agreements with the Governor for such purposes.

(b) The amount which may be loaned to any borrower pursuant to this Act shall not exceed $250 unless, in the opinion of the Governor, the circumstances surrounding the loan are such as to warrant a larger amount, in which event the borrower shall be entitled to a loan not in excess of $400; *Provided, however,* That in any area certified by the President of the

United States to the Governor as a distressed emergency area, the Governor may make loans without regard to the foregoing limitations, under such regulations and for such time as he may prescribe therefor.

(c) No loan shall be made under this Act to any applicant who shall not have first established to the satisfaction of the proper officer or employee of the Farm Credit Administration, under such regulations as the Governor may prescribe (1) that such applicant is unable to procure from other sources a loan in an amount reasonably adequate to meet his needs for the purposes for which loans may be made under this Act; and (2) that such applicant is cooperating directly in the crop production control program of the Agricultural Adjustment Administration or is not proposing to increase his 1934 production of basic agricultural commodities in a manner detrimental to the success of such program.

SEC. 3 (a) The moneys authorized to be loaned by the Governor under this Act are declared to be impressed with a trust to accomplish the purposes provided for by this Act, namely, the production, planting, fallowing, cultivation of crops, and feed for farm livestock, which trust shall continue until the moneys loaned pursuant to this Act have been used for the purposes contemplated by this Act, and it shall be unlawful for any person to make any material false representation for the purpose of obtaining any loan or to assist in obtaining such loan or to dispose of or assist in disposing of any crops given as security for any loan made under authority of this Act, except for the account of the Governor, and

for the purpose of carrying out the provisions of this Act.

* * * * *

3. The Act of June 19, 1934, c. 648, 48 Stat. 1021, 1056, provides as follows:

* * * * *

To meet the emergency and necessity for relief in stricken agricultural areas, to remain available until June 30, 1935, $525,000,000, to be allocated by the President to supplement the appropriations heretofore made for emergency purposes and in addition thereto for (1) making loans to farmers for, and/or (2) the purchase, sale, gift, or other disposition of, seed, feed, freight, summer fallowing and similar purposes; expenditures hereunder and the manner in which they shall be incurred, allowed, and paid, shall be determined by the President, and may include expenditures for personal services and rent in the District of Columbia and elsewhere and for printing and binding and may be made without regard to the provisions of section 3709 of the Revised Statutes.

* * * * *

4. Section 35.1422, South Dakota Code (1939) provides as follows:

Order of Payment of Claims. All demands against the estate of any deceased person must be paid in the following order:

(1) The expenses of administration;

(2) Funeral expenses, including reasonable cost of burial lot, and not to exceed fifty dollars for marker on grave;

(3) The expenses of last sickness;

(4) Any debt that may be due by decedent personally to servants and employees for services rendered within the sixty days next preceding his death;

(5) Debts having preference by the laws of the United States;

(6) All other demands against the estate, except that where a lien for any demand exists by mortgage, pledge, attachments, judgments, or execution levy, such lien shall have preference according to its priority to the extent of such demand, on any specific property on which such lien shall have attached.

U. S. GOVERNMENT PRINTING OFFICE: 1947

No. 417

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

-vs-

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED.

RESPONDENT'S MOTION AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA.

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 417

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

-vs-

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED.

RESPONDENT'S MOTION AND BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA.

Before considering petitioner's application for writ of certiorari on its merits respondent makes the following:

MOTION

1. That the application for writ of certiorari of petitioner be denied and dismissed for the reason that petitioner did not exhaust its remedies in the Supreme Court of the State of South Dakota; in that it did not move or apply to the Supreme Court of the State of

South Dakota for a re-hearing upon entry of the Order of said Supreme Court dated May 20, 1946, (Transcript of Record pages 21-30) Confirming Judgment of the Circuit Court of the Fifth Judicial Circuit within and for Roberts County, South Dakota, as provided therefore in rule 79, set out at Section 33.0751 of the Judicial Code Section 237, 28 U. S. C. 344; 28 U. S. C. A. Section 344. Market St. Ry. Co. -vs- Railroad Commission of the State of California, 324 U. S. 548; 65 S. Ct. 770; Gorman, City Treasurer of Kansas City, Mo., et al -vs- Washington University, 316 U. S. 98; 62 S. Ct. 962; Department of Banking of the State of Nebraska -vs- Pink, Supt. of Insurance of the State of New York, 317 U. S. 264; 63 S. Ct. 233. Respondent makes the further

MOTION

2. Respondent further moves this Court that the application of the petitioner for writ of certiorari be denied and dismissed for the reason that the petition for said writ is based upon the contention that the indebtedness is a debt due the United States Government and is entitled to preference under the provisions of Section 3466 of the Revised Statutes of the United States. While the transcript shows it to be a claim arising out of an obligation due the "Governor of the Farm Credit Administration". (Transcript of Record pages 5, 6, 7, and 8).

REASON FOR DENYING WRIT

It is the contention of the Respondent that the obligation in controversy on this appeal is not an obligation due or owing the Federal Government in its sovereign capacity. That obligations may be due or owing the United States Government or its instrumenalities which may be of different classes or of different preferences. Those obligations due the United States for the support of the Government or its sovereignty have a preferred classification under Section 3466 of the Revised Statutes, while debts due a governmental agency by reason of some governmental business venture are not entitled to preference under this Section.

That where a claim arises upon a debt due the United States Government by reason of a tax or license which has been levied or imposed by the Federal Government in support of its sovereignty and for the purpose of carrying on the necessary functions of the Government, such an obligation falls under the provisions of said Section 3466.

On the other hand, if the obligation or claim arises from some business venture in which the Federal Government has engaged, or if it arises through some governmental agency established by the National Government to operate some set-up or business which is not strictly or necessarily a governmental function, then it does not come under the provisions of said Section 3466, and such claim is not entitled to any pre-

ferred classification as a debt due the United States. This has been the established law of our Government from its very early history dating back to the case of the United States -vs- Planter's Bank of Georgia, 9 Wheat. 904; 6 Fed. 244. The language of Chief Justice Marshall in this opinion seems so pertinent to this controversy that we quote from it here; "It is, we think, a sound principle, that when a sovereign becomes a partner in any trading company, it divests itself so far as concerns the transaction of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the government its privileges and perogatives, it descends to a level with those with whom it associates itself and takes the character which belongs to its associates and the business which is to be transacted."

In this case now before the Court it must be observed that the obligation is not a debt due the United States for the support of the Government in its sovereign capacity. It is a claim arising from a purely business transaction where the deceased borrowed money from the "Governor of the Farm Credit Administration" and gave in return therefore his seven promissory notes (See Transcript of Record pages 5, 6, 7, and 8) promising to pay, not to the United States Government, but to the "Governor of the Farm Credit Administration, or order." There is no statement in any of these notes that they are obligations due the United States. They are all promises to pay the "Governor of

the Farm Credit Administration, or order," and each contains the recital, "This is given as evidence of a loan made by the Governor of the Farm Credit Administration." There is no claim that these notes have been sold or asigned to the United States so far as the record discloses. They are the property of the "Governor of the Farm Credit Administration" and therefore do not come under the provisions of Section 3466, R. S.

Considering the facts as they appear in this case under any fair interpretation it would seem clear that this is not a debt due the United States Government. This is an obligation arising out of money loaned to deceased upon a business transaction out of funds appropriated by Congress to a sub-agency of the Government to be re-loaned by such agency upon an interest rate to be paid by the borrower; or in other words, it is money loaned for hire, or for a wage, or for a profit, and for the use of which in this case the deceased agreed to pay interest at 5½% per annum.

The Government during the period of time when these loans were made could and did borrow money on bond issues at a much lower rate of interest than that fixed for the deceased to pay in these notes. We believe it will be conceded that the money loaned by the Governor of the Farm Credit Administration to these farmers was procurred by sale of bonds at a rate of interest much lower than that exacted from these borrowers and which would give the organization a

considerable profit on this transaction of business. This, it would seem, is particularly true when we consider the volume of business transacted by this agency, and for that reason we believe that the holdings in the following cases are particularly important to the issues here. Planter's Bank of Georgia, 9 Wheat. 904; Sloan Shipyard Incorporation, et al, -vs- United States Shipping Board Emergency Fleet Corporation and the United States of America, 258 U. S. 549; 42 S. Ct. 386, 389; 66 L. Ed. 762. United States of America -vs- Guaranty Trust Co. of New York, et al, 280 U. S. 478; 50 S. Ct. 212, 214; 74 L. Ed. 556.

The Farm Credit Administration appears to be an established organization or agency that has been in continual operation since its inception; and we feel that the Court should take judicial notice that it is still actively engaged in the business of loaning money. It cannot be said that this is a necessary governmental function, nor can it be said that there is any crying need for this set-up at this writing for the farmers are generally throughout the United States enjoying the greatest prosperity of our National history.

To hold these claims are debts due the United States and entitled to priority under the provisions of said section 3466 would defeat the very purpose of the enactment, as is well stated in re: United States -vs- Guaranty Trust Co., et al, 280 U. S. 478. Such holding or ruling will have a depressing effect on all other sources of credit to the farmers and will very seriously

embarrass them in their business and farming operations. No business man or loaning agency in the future, knowing the existence of such preference, would advance or loan money to these people to carry on their farming operations. The Governor of the Farm Credit Administration could make a loan to such farmers which might be either prior or subsequent to that of the private loaning agency and such loan by said administration would have priority over that of the private loan and would be entitled to be paid first in full. Could anyone vision private concerns or private businesses advancing money in a business bearing such hazardous risks? To sustain and uphold the contention of the petitioner would be to place a serious handicap upon worthy farmers who in time of distress may need aid and assistance of private enterprise.

Another point that should be given consideration here is, the similarity existing between the Farm Credit Administration and that arising out of the Emergency Fleet Corporation, in re: Sloan Shipyard Incorporated, et al -vs- United States Shipping Board Emergency Fleet Corporation, Supra, in that both were created under powers given to the President by Congress and by him under presidential order, and as we understand both agencies enjoy the perogatives and privileges to sue and be sued, and in that connection it should be further observed that in this case the claim of the petitioner in this proceeding was presented by the Governor of the Farm Credit Administra-

tion and not by the United States; Keifer & Keifer -vs- Reconstruction Finance Corporation, 306 U. S. 381; 59 S. Ct. 516; 83 L. Ed. 784, cited by this Court in Home Owners Loan Corporation, 312 U. S. 81; 61 S. Ct. 485; United States -vs- Maxen, 307 U. S. 200; 59 S. Ct. 811; and Federal Land Bank of St. Louis -vs- Priddy, 295 U. S. 299; 55 S. Ct. 705.

Petitioner in paragraph 3 at pages 12 and 13 of its Brief states, "If the decision below is allowed to stand, it will undoubtedly encourage other state courts to take a hostile view towards R. S. 3466, and to disregard its 'plain command', both with respect to claims arising under Farm Credit Administration statutes and claims arising under other Federal statutes. * * * The Secretary of Agriculture advises that claims of the character herein involved * * * and similar claims for loans * * * arise constantly and in the course of time there will be hundreds of such claims aggregating a large amount of money. The United States Attorney for the District of South Dakota advises that, as a consequence of the decision below, the Courts of South Dakota are refusing to recognize claims based upon loans of the Farm Credit Administration as debts due the United States, and are applying state statutes of limitations to bar prosecution of such claims."

It is Respondent's thought and position relative to these statements; That the decision of the Court should be based upon reason, found in Justice and in

fairness, supported by sound legal principles and carrying with it weight and the highest respect for judicial law and justice. We have never considered that the final decision of the highest Court in this land should be an instrument to be used for the purpose of harassing and prosecuting distressed people, or as a club with which to threaten them.

Further that if the Court should give to this section the interpretation urged by petitioner, then we have come to that place in the history of our government where the government may enter any other business by setting up governmental agencies in competition with all other private business and that all the transactions of such businesses would become those of the United States in its governmental sovereignty and that all claims arising out of such transactions will be obligations due the Federal Government, having priority over all like claims of other creditors.

Other points pertinent to the issues now here before this Court in this appeal and which have not been elaborated upon or urged in this Brief are fully set out and discussed with the supporting authorities in the Opinion of the Supreme Court of South Dakota in the appeal of this case to that tribunal set out in the "Transcript of Record", pages 21-30. Specific reference is here made to that decision and the supporting authorities, and the same is hereby most respectfully referred to the Court for its careful consideration.

We do not feel that it is necessary to reprint the

Opinion or the authorities therein submitted in this Brief.

In closing we would state that it does not appear to us as suggested in petitioner's brief and argued in the Supreme Court of the State of South Dakota, that these loans were a work of the Benevolent Government coming to the aid of the distressed farmers in time of need. It seems that the element of profit is quite definitely apparent therein by exacting a rate of interest of 5½% that continues to run without end.

We cannot conceive that our National Congress ever intended to set up a governmental agency to loan money to a distressed people at a rate of interest evidenced by the notes appearing in the record and claim that such loans should be preferred over all other obligations of the debtor, and including exemptions allowed to him and also allowed to his family in case of his death, as provided by the statutes of the several states for the protection of debtors and their widows and children. Such would appear to be far beyond the intentions of our Congress that enacted this law.

CONCLUSION

For the reasons and upon all of the grounds stated herein we submit that the petition for writ of certiorari should not be granted.

Respectfully submitted,

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Attorneys for Respondent.

October 14, 1946.

APPENDIX

Rule 79 of 1939 of the Supreme Court of the State of South Dakota as set out in Section 33.0751 of the South Dakota Code of 1939.

> Rehearings; petition; answer; service. A petition for the rehearing of a cause heard on appeal may be served and filed within twenty days after the decision. The adverse party may serve and file answer thereto within ten days after service of the petition. The petition shall state briefly the ground upon which a rehearing is asked and the points supposed to have been overlooked or misapprehended by the Court, with proper reference to the particular portion of the printed record and to the authorities relied upon. The petition and answer may be typewritten. An original and five copies thereof shall be filed.
>
> If a rehearing be granted, the Court in its order will prescribe the form and time of service of briefs or provide for oral argument as may seem appropriate to the case. The Clerk of the Court shall notify the attorneys of record by mail of the action of the Court granting or denying a petition for rehearing.

SUPREME COURT OF THE UNITED STATES

No. 417.—October Term, 1946.

United States Department of Agriculture, Emergency Crop and Feed Loans, Petitioner, v. George G. Remund, as Administrator of the Estate of Wilhelm Buttke, Deceased.	On Writ of Certiorari to the Supreme Court of the State of South Dakota.

[March 17, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

We are faced here with the problem of whether, in a state probate proceeding, a claim asserted by the Farm Credit Administration through certain of its officials for and on behalf of the United States is entitled to priority under § 3466 of the Revised Statutes, 31 U. S. C. § 191.

The Governor of the Farm Credit Administration, pursuant to the Acts of February 23, 1934,[1] and June 19, 1934,[2] extended emergency feed and crop loans totalling $370.00 to Wilhelm Buttke, a South Dakota farmer. Most of these loans remained unpaid. On December 26, 1941, Buttke died intestate, leaving an estate insufficient to pay all of his debts. Respondent was appointed administrator of the estate. On March 2, 1942, an authorized agent of the Governor of the Farm Credit Administration filed in the County Court of Roberts County, South Dakota, a claim against the estate for $523.80, the amount of the unpaid indebtedness plus interest. This claim was made "for and on behalf of the United States of America"

[1] 48 Stat. 354.

[2] 48 Stat. 1021, 1056.

and a priority therefor on behalf of the United States was asserted under § 3466 of the Revised Statutes.

The County Court denied preference to this claim. But it did allow the claim in the amount of $79.53, which represented the pro rata share of a common creditor's claim. This decision was affirmed by the Circuit Court of the Fifth Judicial Circuit of South Dakota and by the Supreme Court of South Dakota. 23 N. W. 2d 281. The latter court felt that the Acts of February 23, 1934, and June 19, 1934, created an exception to § 3466 and that the claimed priority should accordingly be refused on the authority of *United States* v. *Guaranty Trust Co.*, 280 U. S. 478. We granted certiorari because of the important problems thereby raised.

The relevant portion of § 3466 of the Revised Statutes provides that ". . . whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied . . ."

Initially, it is suggested that § 3466 is inapplicable since the claim in issue is not a debt due to the United States. The claim grows out of the seven notes executed by the deceased to "the Governor of the Farm Credit Administration, or order, at Washington, D. C." These notes stated that they were "given as evidence of a loan made by the Governor of the Farm Credit Administration." On the premise that the Farm Credit Administration is an entity separate and distinct from the United States Government, the argument is made that obligations due the Farm Credit Administration fall outside the priority established by § 3466. We cannot agree.

The Farm Credit Administration is plainly one of the many administrative units of the United States Government, established to carry out the functions delegated to it by Congress. It bears none of the features of a gov-

ernment corporation with a legal entity separate from that of the United States, whatever difference that might make as to the application of § 3466. Cf. *Sloan Shipyards Corp.* v. *United States Fleet Corp.*, 258 U. S. 549. It had its inception in 1933 as an independent agency, assuming the functions of the Federal Farm Board and the Federal Farm Loan Board. Executive Order No. 6084. In 1939, it was transferred to the Department of Agriculture and placed under the general supervision and direction of the Secretary of Agriculture. Reorganization Plan No. 1, § 401 (a), 53 Stat. 1429; 4 Fed. Reg. 2730. Its functions, personnel and property were then consolidated in 1942 with those of certain other agencies to form the Food Production Administration of the Department of Agriculture. Executive Order No. 9280, 7 Fed. Reg. 10179. At no time has the Farm Credit Administration been other than an unincorporated agency of the United States Government, administering and lending funds appropriated by Congress out of the United States Treasury and returning the money to the Treasury upon repayment. In short, it is an integral part of the governmental mechanism. And the use of a name other than that of the United States cannot change that fact. *United States* v. *Fontenot*, 33 F. Supp. 629; *In re Wilson*, 23 F. Supp. 236; *Federal Reserve Bank of Dallas* v. *Smylie*, (Tex. Civ. App.) 134 S. W. 2d 838; *Helms* v. *Emergency Crop & Seed Loan Office*, 216 N. C. 581, 5 S. E. 2d 822. See also *North Dakota-Montana Wheat Growers' Ass'n* v. *United States*, 66 F. 2d 573. Hence any debt owed the Farm Credit Administration is a debt owed the United States within the meaning of § 3466.

Moreover, the priority given by § 3466 to a debt due to the United States is unaffected by the fact that a claim based upon that debt is filed in the name of an agency of the United States or an authorized officer of such an

agency. It is enough that there is an obligation owed the United States. Whether the claim is filed in the name of the United States or in the name of an officer or agency is immaterial; in the latter instance, the claim is necessarily filed on behalf of the United States and the legal effect is the same as if it had been filed in that name. Nothing in the language or policy of § 3466 justifies any other conclusion. It follows that the method of filing in this case cannot be questioned. The claim was filed in the name of the Governor of the Farm Credit Administration "for and on behalf of the United States of America"—an explicit recognition of the legal realities involved.

The main contention, however, is that the purpose of the statutes under which the loans were made is inconsistent with § 3466, thereby rendering it inapplicable. The Acts of February 23, 1934, and June 19, 1934, authorized feed and crop loans to farmers in drought and storm-stricken areas of the nation. It is said that the prime purpose of these Acts was to restore the credit of the farmers and that to give effect to § 3466 would impair that credit. Reliance is placed upon *United States* v. *Guaranty Trust Co., supra.* This Court there held that § 3466 was inapplicable to the collection of loans made by the Government to railroad carriers to rehabilitate and maintain their credit status; it was felt that to give priority under such circumstances would defeat the purpose of the legislation by impairing the credit of the railroads. See also *Cook County National Bank* v. *United States*, 107 U. S. 445.

But it is manifest that the purpose of the Acts of February 23, 1934, and June 19, 1934, was to give emergency relief to distressed farmers rather than to restore their credit status. These were but two of a series of

emergency seed and crop loan statutes[3] enacted at various times from 1921 to 1938, a period when farmers were the victims of repeated crop failures and adverse economic conditions. Their credit was often impaired, but their most urgent need was for money to purchase feed and to plant crops; without such money, distress and unemployment might have been their lot. It was to meet that urgent need that Congress passed these statutes.

More specifically, the two Acts under consideration were designed to make loans available to those farmers who were unable to secure credit from the Production Credit Associations, organized pursuant to the Farm Credit Act of 1933.[4] It was recognized that many farmers could not qualify for loans from those Associations. Some method of lending aid and assistance to those who had no credit and no money with which to buy feed for their livestock and seeds for their crops was essential in the absence of a more direct form of Government relief. S. Rep. 148, 73d Cong., 2d Sess.; H. Rep. 521, 73d Cong., 2d Sess. As was said by Representative Kerr, "Let it be remembered that the Government is not seeking to make an investment; this is simply an endeavor to finance the farmers of this country who are utterly unable to finance themselves." 78 Cong. Rec. 1959. See *United States* v. *Thomas*, 107 F. 2d 765, 766; *Person* v. *United States*, 112 F. 2d 1, 2.

We conclude that there is no irreconcilable conflict between giving emergency loans to distressed farmers and giving priority to the collection of these loans pursuant

[3] 41 Stat. 1347; 42 Stat. 467; 43 Stat. 110; 44 Stat. 1245, 1251; 45 Stat. 1306, as amended by 46 Stat. 3; 46 Stat. 78, as amended by 46 Stat. 254; 46 Stat. 1032, as amended by 46 Stat. 1160; 46 Stat. 1276; 47 Stat. 5; 47 Stat. 795; 48 Stat. 354; 48 Stat. 1056; 49 Stat. 28; 50 Stat. 5; 52 Stat. 27.

[4] 48 Stat. 257.

to § 3466. Such priority could in no way impair the aid which the farmers sought through these loans; nor could it embarrass the farmers in their daily operations. Moreover, these loans called for a first lien on crops growing or to be grown, or on livestock. The conditions prevailing in 1934 made this type of security uncertain and there is no indication that Congress meant such a lien to be the sole security to which the Government could look for repayment.

We reiterate what was said in *United States* v. *Emory*, 314 U. S. 423, 433: "Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of § 3466." In this case, as in that, we think such inconsistency is wholly wanting. *United States* v. *Guaranty Trust Co.*, *supra*, is therefore inapposite.

Reversed.

MR. JUSTICE DOUGLAS would affirm the judgment on the authority of *United States* v. *Guaranty Trust Co.*, 280 U. S. 478.